

**BEFORE THE BOARD OF ZONING ADJUSTMENT  
OF THE DISTRICT OF COLUMBIA**

Application of Dix Street Corridor Revitalization Partners, LLC

ANC: 7C

Special Exception and Variance Application for New  
Multi-Family Residential Development in the R-5-A and  
C-2-A Zone Districts

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**STATEMENT OF EXISTING AND INTENDED USE AND PRELIMINARY  
STATEMENT OF SATISFACTION OF BURDEN OF PROOF FOR SPECIAL  
EXCEPTION AND AREA VARIANCE RELIEF**

**I. STATEMENT OF EXISTING AND INTENDED USE**

This is an application of Dix Street Corridor Revitalization Partners, LLC<sup>1</sup> (“**Applicant**”) for special exception approval pursuant to 11 DCMR §§ 353.1 and 2516.1, and area variance relief from 11 DCMR §§ 2101.1, 2115.1, 2115.4, §2115.10, and 2516.4 in order to construct or renovate 60 residential units on property located at 400-414 Eastern Avenue, NE (Lots 17, 18, 19 in Square 5260) and Lot 806 in Square 5260 (comprised of Lots 21, 22, 23, and 24, and a portion of Lot 25)) (collectively, the “**Public Property**”) and 405 – 407 Dix Street, NE (Lots 2, 28, and 800 in Square 5260) (collectively, the “**Private Property**”, together with the Public Property, the “**Property**”). As depicted on Exhibit C, the Property is bounded by Eastern Avenue, NE to the north, 61<sup>st</sup> Street, NE to the east, and Dix Street, NE to the south. As depicted on Exhibit D, the Property is split-zoned and is located in the R-5-A and C-2-A Zone Districts. The 60 residential units will be constructed as townhomes in eleven separate

<sup>1</sup> The District of Columbia Deputy Mayor of Economic Development’s office has jurisdictional authority over the Public Property and has signed the agent authorization letter therefor. Sarah and Francis Fabrizio own the Private Property and have signed the agent authorization letter therefor. The Applicant is the winning bidder for the Public Property and the contract purchaser of the Private Property and will be the developer of this project.

**BOARD OF ZONING ADJUSTMENT  
District of Columbia**

Board of Zoning Adjustment  
District of Columbia  
CASE NO. 18037  
EXHIBIT NO. 4

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buildings on the Property and all will be affordable housing<sup>2</sup>. As depicted on Exhibit E, the Property is currently improved with five abandoned residential buildings and a small one story commercial building and contains vacant lots.

## **II. NATURE OF RELIEF SOUGHT**

In order to develop new multi-family residential units in the R-5-A Zone District, special exception relief must be granted by the Board of Zoning Adjustment (“**BZA**”) pursuant to §353. The Applicant is seeking §353 special exception approval in order to construct four new residential units in one new building and renovate and reconfigure two buildings that currently exist into ten new residential units on the portion of the Property that is located in the R-5-A Zone District. Three additional structures exist on the Property and will be renovated into twelve residential units but will not be expanded.

For the entire Property, the Applicant is seeking special exception approval in order to construct more than one building on a single record lot pursuant to 11 DCMR §2516.1<sup>3</sup>.

The Applicant is seeking variance relief from §2516.4 regarding the requirement that each theoretical lot satisfy all open spaces and density requirements. The proposed buildings will not satisfy all front, rear, side yard, lot occupancy, and FAR requirements under these Sections of the Zoning Regulations as described further herein<sup>4</sup>.

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<sup>2</sup> These units will have the following affordability levels: 12 units will be priced at or under 30% AMI; 4 units will be priced between 31% AMI and 60% AMI; 44 units will be priced between 61% and 120% AMI.

<sup>3</sup> Under Section §2516.2, since the C-2-A zoned portion of the Property is within 25 feet of a Residence District, the provisions of §2516 apply to such portions of the Property, rather than the provisions of §2517.

<sup>4</sup> Note that the theoretical lot for Building 9 is split-zoned. Applicant has calculated all zoning elements for such building based on the more restrictive zoning classification, R-5-A.

- Rear yards – The R-5-A Zone District requires rear yards of 20 feet and the C-2-A Zone District requires rear yards of 15 feet. The proposed theoretical lots in the R-5-A Zone District include three non-conforming rear yards of 18, 15.13, and 3.26 feet. The proposed theoretical lots in the C-2-A Zone District include four non-conforming rear yards, measuring 4, 4, 4, and 3.75 feet.
- Side yards – The R-5-A Zone Districts require side yards to be 3 inches per foot of height, but no less than 8 feet. Therefore, with heights of the buildings at 28 feet, 4 inches and 40 feet, side yards of 7.08 feet and 10 feet are required for the buildings on the R-5-A portion of the Property, respectively. The proposed theoretical lots in the R-5-A Zone District include six non-conforming side yards, measuring 5.88 and 3.46 feet (when required to be 7.08 feet) and 4, 4, 1, and 0 feet (when required to be 10 feet). For buildings other than semi-detached structures, such as the instant case, the C-2-A Zone Districts does not require side yards, but where they are provided, they are to be 2 inches per foot of height, but no less than 6 feet. Therefore, with heights of the buildings at 40 feet for the buildings on the C-2-A portion of the Property, side yards of 6.7 feet are required. The proposed theoretical lots in the C-2-A Zone District include four non-conforming side yards, measuring 5, 2, .96, and .64 feet.
- Front yards – 2516.5 requires that theoretical lots containing buildings without street frontage maintain an open space at the front of the building

equivalent to the required rear yard.<sup>5</sup> Therefore, Buildings 6, 8, 9, and 10 would require front yards under §2516.5. Buildings 6 and 9 would require front yards of 20 feet and Buildings 8 and 10 would require front yards of 15 feet. Building 6 has no front yard since portions of the front yard are combined into adjacent theoretical lots. Building 9 has a compliant front yard of over 49 feet. Buildings 8 and 10 have front yards of 5.84 and 6.14 feet, respectively.

- FAR – The R-5-A Zone District allows a maximum FAR of 0.9 and the C-2-A Zone District allows a maximum FAR of 2.5. The proposed theoretical lots in the R-5-A Zone District include three non-conforming FARs of 1.3, 1.0 and 1.3. The proposed theoretical lots in the C-2-A Zone District include two non-conforming FARs of 3.3 and 2.7.
- Lot occupancy – The R-5-A Zone District allows a maximum lot occupancy of 40% and the C-2-A Zone District allows a maximum lot occupancy of 60%. The proposed theoretical lots in the R-5-A Zone District include three non-conforming lot occupancies of 45%, 49%, and 52%. The proposed theoretical lots in the C-2-A Zone District include four non-conforming lot occupancies of 61%, 64%, 74%, and 88%.

The Applicant is seeking variance relief from §2101.1 regarding the number of parking spaces required. The R-5-A Zone District requires one parking space for each residential unit. While parking requirements are satisfied for the C-2-A zoned portion of the Property, the Applicant is proposing 16 parking spaces for 26 residential units on the

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<sup>5</sup> §2516.5 require front yards equal to rear yards for buildings without street frontage. Relief from §2516.4 will allow relief from §2516.5 as well.

R-5-A portion of the Property. Altogether, the proposed project provides 57 parking spaces for 60 residential units.

The Applicant is seeking variance relief from §§2115.1<sup>6</sup> and 2115.10 regarding the required size of parking spaces. §2115.1 requires that parking spaces are a minimum of 9 feet in width and 19 feet in length. §2115.10 requires that parking spaces have a minimum parking area of 285 square feet. In the instant case, all required surface parking spaces provided would be 8 feet in width 18 feet except for three spaces – one on the R-5-A portion of the Property and two on the C-2-A portion of the Property, which will be 8 feet in width and 16 feet in length. All of such spaces would be less than 285 square feet in parking space area.

The Applicant is seeking variance relief from §2115.4 regarding the grouping of contiguous compact parking spaces. The Zoning Regulations require that compact parking spaces are grouped together in a minimum of five parking spaces. In the instant case, two compact parking spaces are located adjacent to each other on the C-2-A portion of the Property.

As noted, the Applicant is constructing an all affordable housing project at the Property yet is employing a high level of design and amenities. As a result, Applicant requests an exemption from the \$11,200 filing fee associated with this Application.

### **III. JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the relief requested pursuant to §§3104.1 and 3103.2 of the Zoning Regulations.

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<sup>6</sup> Instead of requesting relief under §2115.2 regarding the amount of compact parking spaces provided, the Applicant is requesting relief from §2115.1 in order to allow the proposed smaller sizes of the parking spaces provided. The parking spaces provided on site would satisfy the minimum dimensions of compact parking spaces. Typically, compact spaces would be limited to 40% of the parking spaces provided.

#### **IV. DESCRIPTION OF THE PROPERTY AND THE SURROUNDING AREA**

As mentioned and as depicted on Exhibit E, the Property is currently improved with five abandoned residential buildings and a small one story commercial building and contains vacant lots. Except for the small one story commercial building (with two tenants, as shown on Tab 6 of the Application), the majority of the site is unutilized and/or abandoned.

The Property is located in the Deanwood neighborhood near the eastern corner of the District of Columbia, with Seat Pleasant, Maryland located across Eastern Avenue, NE. The Property is surrounded by single family homes to the northwest and south, small retail operations to the west and the south, and multi-family housing to the east and north across Eastern Avenue, NE. Three blocks to the south of the Property is the Capitol Heights Metrorail Station and the Watts Branch Recreation Center.

As depicted on Exhibit D, the Property is located in the R-5-A and C-2-A Zone Districts. The Property includes approximately 78,989 square feet of land area (1.81 acres), including areas to be designated as alleyways. The Property includes a grade change of over 24 feet from the northern edge to the southwestern edge of the Property.

#### **V. DESCRIPTION OF THE PROJECT**

The proposed project will include 60 single family residential townhomes that will be renovated or constructed in eleven buildings on the Property (the “**Project**”) and will be known as “Eden Place”. All townhomes will be affordable housing and be comprised of three bedroom units in varying configurations. The renovated townhomes in the existing structures (“**Renovated Townhomes**”) will be approximately 24 feet 10.25 inches wide and approximately 26 feet and 9 inches deep. The new townhomes in

the new or rebuilt structures (“**New Townhomes**”) will be approximately 16 feet wide and approximately 35 feet inches deep. (See townhouse unit plans attached as part of Exhibit A.) The Renovated Townhomes will maintain their height of approximately 28 feet, 4 inches and the New Townhomes on the R-5-A portions of the Property will have a height of approximately 40 feet, when measured from the finished grade level at the middle of the front of the building to the ceiling of the top story.<sup>7</sup> The New Townhomes on the C-2-A portions of the Property would have a zoning height measurement of 40 feet measured to the highest point of the roof.

32 of the 34 New Townhomes on the C-2-A portions of the Property will have rear-loaded garages. Two of the New Townhomes will not be able to feature garages due to the grade change of the Property where they are located. The Project will include 25 surface driveway spaces throughout the project, primarily located along the portions of the reconfigured alley adjacent to the Property. Such parking spaces located along the alley will be primarily for use by the residents on the R-5-A portions of the Property. In total, including 32 garage parking spaces and 25 surface parking spaces, the Project will provide approximately 57 parking spaces.

The Project will have three means of vehicular access: a driveway on Dix Street, NE, an alley opening on 61<sup>st</sup> Street, NE, and an alley opening on Eastern Avenue, NE. The alley system interior to the Project will include predominantly 20 foot wide alleys that provide access to the garages of the townhouses and service areas. The Project will also greatly enhance the remaining portions of the alley in the Square, which are currently virtually impassable. As part of the Project, the Applicant is applying to close

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<sup>7</sup> In the R-5-A Zone District, building height is measured to the highest point of the ceiling of the top story. (See §§ 199 and 400.1.)

the east/west portion of the alley between Lots 800 and 806 shown on page C3.00 in Exhibit A and replace its with another east/west spur to the northern portion of Lot 28 (which will be widened in part to 20 feet). Such new alley area will be dedicated to the District and publicly accessible. In addition, the north/south portion of the alley will essentially be expanded from 15 feet to 18 feet (by adding 3 additional feet on private property). A diagram showing such new alley configuration is attached as page C5.00 of Exhibit B. The reconfiguration of the alley will maintain the current access scheme for neighbors, but provide greater site efficiency for the proposed project and the general public.

The Project includes significant landscaping and green space throughout the Property. The Project will replace an existing asphalt parking lot with a tot lot and park area for its residents. Such open space will be located in the interior of the Property. After the alley closing, approximately 27% of the Project, or approximately 19,800 square feet of lot area, will remain public green space.

Due to the significant change in topography on the Property, a series of retaining walls will be created. The retaining walls will be appropriately landscaped and treated in order to present an appropriate appearance to the surrounding community.

The Applicant will be subdividing the R-5-A portion of the Property into one record lot and the C-2-A portion of the Property into another record lot.

Applicant and the development team have met with the Office of Planning (“OP”) and the District of Columbia Department of Transportation (“DDOT”). OP and DDOT were generally supportive of the preliminary concept for the Project. We look forward to

working with OP, DDOT, and all other government departments and community organizations as the Applicant delivers this Project.

**VI. THE APPLICATION MEETS THE REQUIREMENTS FOR  
SPECIAL EXCEPTION RELIEF PURSUANT TO §§353,  
2516, AND 3103.1 OF THE ZONING REGULATIONS**

The Project is in harmony with the intent and purposes of the Zoning Regulations and is generally consistent with the requirements of §§353, 2516, and 3103.1.

A. The Proposed Project Satisfies the Requirements of §353 of the Zoning Regulations

The main purpose of §353 is to assure that proposed multi-family residential projects are reviewed by various District agencies in order to minimize any adverse impact on surrounding properties which may occur as a result of the project. The Applicant has begun the consultation process with all relevant District agencies regarding this Project. As discussed herein, the Project will not create any adverse impacts on the surrounding community.

The Applicant continues to develop its good relationship with the surrounding community and local church organizations. The Applicant is in the process of scheduling meetings with Advisory Neighborhood Commission (“ANC”) 7C, other members of the surrounding community, and any other interested local groups.

B. Satisfaction of the Requirements of §2516

The Applicant is proposing the renovation or creation of eleven buildings on eleven theoretical lots on the Property. Relief can be granted under §2516 if the special exception standards under §3104.1 are satisfied<sup>8</sup>. §3104.1 requires that the requested

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<sup>8</sup> Note that the Office of Planning has indicated that the provisions of §2516 are to be revised in order to approve multiple buildings on one record lot without the extent of duplicative requirements.

relief is in harmony with the general purpose and intent of the Zoning Regulations and does not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations. Such standards are satisfied for the instant relief request. The Project delivers an active townhouse community onto property that is currently underutilized, vacant, or, worst of all, abandoned. The Project allowed by the granting of this special exception relief will not adversely affect the use of neighboring properties but rather enhance the day to day life of such nearby residents. Further, the proposed buildings could be combined into one large structure on each proposed lot, but such structure would not reflect the more granular feel of the wider surrounding community. The design intent is to assimilate the development into the urban residential fabric of the nearby neighborhoods. Perhaps most importantly, the Project delivers a significant degree of affordable housing to this important parcel while incorporating a high level of design and efficient site plan with appropriate landscaping.

(1) Section 2516

The specific technical requirements of §2516 are incorporated into this application as follows:

*(i) §2516.3 – The Applicant shall submit site plans for all new rights-of-way and easements, and existing and preliminary landscaping and grading plans with appropriate building footprints. Applicant shall also submit either with the application or later the final landscaping and grading plans and typical floor plans.*

The required site plans for new rights-of-way are included as Page 2 of Exhibit A and Pages C3.00, C5.00, and C5.10 of Exhibit B.

The required site plans for existing structures are included as Page 3.00 of Exhibit B.

The required landscaping plans with appropriate building footprints are included as Page 2 of Exhibit A and Pages C5.00, C5.10, and C5.20 of Exhibit B. If the Applicant revises the landscaping plan, Applicant will supplement the record of the BZA case.

The required grading plan is included as Page C6.00 of Exhibit B. If the Applicant revises the grading plan, Applicant will supplement the record of the BZA case.

The typical floor plans for the residential units – both new and renovated – are included as Pages 3 and 4 of Exhibit A. The elevations, design considerations, and massing study for the Project comprise the remainder of Exhibit A and Page C5.20 of Exhibit B.

*(ii) §2516.4 – The number of principal buildings permitted by this section shall not be limited; provided, that the Applicant submits satisfactory evidence that all the requirements of this chapter (such as use, height, bulk, open spaces around each building, and limitations on structures on alley lots pursuant to § 2507), and §§ 3202.2 and 3202.3 are met.*

The Applicant requests variance relief from §2516.4, which requires that each theoretical lot satisfy all relevant requirements of the Zoning Regulations (such as use, height, bulk, and open spaces around each building). The Applicant's satisfaction of the variance relief standards is addressed in this statement below.

*(iii) §2516.5 – If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the following provisions shall apply:*

- (a) The front of the building shall be the side upon which the principal entrance is located;*
- (b) Open space in front of the entrance shall be required that is equivalent either to the required rear yard in the zone district in*

*which the building is located or to the distance between the building restriction line recorded on the records of the Surveyor of the District of Columbia for the subdivided lot and the public space upon which the subdivided lot fronts, whichever is greater;*

- (c) A rear yard shall be required; and*
- (d) If any part of the boundary of a theoretical lot is located in common with the rear lot line of the subdivided lot of which it is a part, the rear yard of the theoretical lot shall be along the boundary of the subdivided lot.*

Since §2516.5 relates to open space requirements around each building and the Applicant is already requesting relief for front yard and open space requirements under §2516.4, Applicant does not require separate relief under §2516.5.

*(iv) §2516.6 – In providing for net density for theoretical lots under §2516.6, the Zoning Regulations require that: (a) the area of land that forms the private roads not be included in the square footage allotment of each separate lot or in any yard that is required, (b) the private roads for ingress and egress into and out of the development shall be at least 25 feet in width, and (c) the private roads have a turning area with a diameter of not less than 60 feet when fewer than two entrances or exits exist on a private road. These requirements in section (b) and (c) above may be modified if the Board finds that a lesser width or diameter will be compatible with, and will not be likely to have an adverse effect on, the present character and future development of the neighborhood; provided that the Board shall give specific consideration to the spacing of buildings and the availability of resident, guest and service parking.*

The area of land that forms the paved alley running through the southwest portion of the Project is not included in the square footage allotment of each separate theoretical lot or in any required yard.

As is shown by Page 2 of Exhibit A and Exhibit B, the access provided to the residential units balances the need for operational efficiency and open space. The provision of many means of ingress and egress is a beneficial characteristic of the Project. Such accessways allow residents, guests and service vehicles a

greater choice to access the Project and enhance life safety considerations if one of such accessways is blocked.

In addition, the calculations specified by §2516.6 are more applicable to a single-family home project that includes a private road servicing numerous homes, rather than the present case. The dimensions of the accessways in the Project are optimized for the size of the Property, its location in an urban setting, and the number of units on site. The width of the new paved area of the entrance/exist to Dix Street is 18 feet wide (and the total width is 24.10 feet). The width of the paved alley running through the southwest portion of the Project is 20 feet and the most narrow point of its total width is 26 feet. The Project also relies on the current widths of the paved alley and its two access points. The Applicant will provide adequate turning areas in the Project's accessways to allow vehicles to turn and for trash trucks to enter the Property to pick-up and remove the trash without impacting access to parking spaces or impeding traffic flow in the area.

Further satisfaction of this subsection 2516.6 is described in section (vi) below.

*(v) §2516. 7 – Where not in conflict with the Act to Regulate the Height of Buildings in the District of Columbia (“**Height Act**”), the height of a building governed by the provisions of this section, in all zone districts, shall be measured from the finished grade at the middle of the front of the building.*

The buildings comprising the Project have been measured from the finished grade at the middle of the front of each building and comply with the Height Act.

(vi) §2516.9 – *The proposed development shall comply with the substantive provisions of this title and shall not likely have an adverse effect on the present character and future development of the neighborhood.*

The Project has been thoughtfully designed so that it will not have an adverse effect on the present character and future development of the neighborhood. Rather, the Project will have a truly beneficial impact on the character and future development of the neighborhood. As discussed above, this Project replaces an underutilized and largely vacant and abandoned property with an appropriately designed and sited townhouse community. Further, the Project brings a great deal of new affordable housing into the Deanwood community. The Project will provide additional safety to the area by providing “eyes on the street” along Eastern Avenue and Dix Street, while maintaining the same rhythm and scale of development as found in the surrounding neighborhood.

The proposed structures are also in harmony with the existing neighborhood communities and therefore will not adversely impact the character of the surrounding areas. The Project has been designed to complement the existing neighborhood communities. In the R-5-A zoned portion of the Property, the Project provides a significant buffer from the rear of the proposed structures along Eastern Avenue, NE, to the property lines of the single-family homes on 61<sup>st</sup> Street, NE. Moreover, the proposed height and mass of the structures are consistent with the numerous garden apartment buildings that exist in the immediately surrounding Deanwood neighborhood, including directly across Eastern Avenue.

(vii) §2516.10 – *Before taking final action on an application under this section, the Board shall refer the application to the D.C. Office of Planning for coordination, review, and report, including:*

- (a) *The relationship of the proposed development to the overall purpose and intent of the Zoning Regulations, and other planning considerations for the area and the District of Columbia as a whole, including the plans, programs, and policies of other departments and agencies of the District government; provided, that the planning considerations that are addressed shall include, but not be limited to:*
  - (1) *Public safety relating to police and fire concerns;*
  - (2) *The environment, relating to water supply, water pollution, soil erosion, and solid waste management;*
  - (3) *Public education;*
  - (4) *Recreation;*
  - (5) *Parking, loading, and traffic;*
  - (6) *Urban design; and*
  - (7) *As appropriate, historic preservation and visual impacts on adjacent parkland;*
- (b) *Considerations of site planning; the size, location, and bearing capacity of driveways; deliveries to be made to the site; side and rear yards; density and open space; and the location, design, and screening of structures;*
- (c) *Considerations of traffic to be generated and parking spaces to be provided, and their impacts;*
- (d) *The impact of the proposed development on neighboring properties; and*
- (e) *The findings, considerations, and recommendations of other District government agencies.*

The Application will be referred to OP for coordination, review, and report as described above. The Applicant has already had a preliminary meeting with OP and DDOT and will continue to work with OP and DDOT and all other District agencies to achieve the best possible result for the Project.

## **VII. THE APPLICATION MEETS THE REQUIREMENTS FOR A VARIANCE UNDER §3103.2 OF THE ZONING REGULATIONS**

The Applicant is seeking variance relief from the following sections of the Zoning Regulations: 11 DCMR §2101.1 since the portion of the Project zoned R-5-A does not provide the required amount of parking spaces, 11 DCMR §§2115.1 and 2115.10 since

the parking spaces provided do not satisfy the required minimum size for parking spaces, 11 DCMR §2115.4 since the compact parking spaces provided on the C-2-A portion of the Property are not grouped in groups of at least five compact parking spaces, and 11 DCMR §2516.4 of the Zoning Regulations as several of the proposed theoretical lots in both the R-5-A and C-2-A zoned portions of the Property do not satisfy the rear, front or side yard, lot occupancy and/or FAR requirements. In order to satisfy the standards for area variance relief, the Applicant must satisfy a three part test:

- (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.

See Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990).

The Applicant meets the test as follows:

A. 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 a series of exceptional situations and conditions. As noted previously, the Property is split-zoned, with over half of the Property located in the R-5-A Zone District.

In addition, overall, the Property is very oddly-shaped with a more rectangular section along Dix Street and a triangle shaped section along Eastern Avenue. Further, the Property is comprised of oddly-configured lots. The primary portion of the Property – that property zoned R-5-A – is comprised of three large triangular lots that combine to create one very large triangular lot. As noted above, the Applicant will be subdividing the R-5-A portion of the Property into one record lot and the C-2-A portion of the Property into one record lot. However, the resulting lots will still be oddly-shaped due to the zoning line and the configurations of the alley and streets. The large R-5-A triangle will continue to protrude into the C-2-A portion of the Property, which wraps around the point of the triangle. Clearly, such configuration of lots is atypical.

Importantly, the portion of the Property zoned R-5-A also contains five existing structures that will be partially maintained and renovated as part of the Project. Such existing structures dictate the layout of the Project and cause difficulties conforming to all zoning elements.

Also, the Property includes a grade change of over 24 feet from the northeastern edge to the southwestern edge of the Property.

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

It is important to note how the DC Court of Appeals has defined “practical difficulty”. In reviewing the standard for practical difficulty, the D.C. Court of Appeals

stated in Palmer v. D.C. Bd. of Zoning Adjustment, 287 A. 2d 535, 542 (D.C. 1972) that, “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] 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.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adjustment, 606 A.2d 1362, 1365 (D.C. 1992), citing Gilmartin v. D.C. Bd. of Zoning Adjustment, 579 A.2d 1164, 1170 (D.C. 1990).

It is well settled that the BZA may consider “... a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ ....”. Gilmartin, 579 A.2d at 1171, citing Barbour v. D.C. Bd. of Zoning Adjustment, 358 A. 2d 326, 327 (D.C. 1976). See also, Tyler v. D.C. Bd. of Zoning Adjustment, 606 A.2d 1362, 1367 (D.C. 1992). 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.* Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, but not necessarily impossible. The Applicant, as demonstrated below, meets this standard.

Due to the exceptional and extraordinary situations and conditions of the Property, notably the fact that the Property has a dramatic topography change, is split-zoned, oddly-shaped, and contains existing structures, the Applicant is faced with a practical difficulty in creating a development that presents itself to the surrounding community as a single integrated and cohesive development and satisfies the yard, lot

occupancy, and FAR requirements of the R-5-A and C-2-A Zone Districts as theoretical lots, the parking space number and space requirements, and the grouping of compact parking spaces requirement.

(1) §2516.4 variances.

The requested front, rear, and side yard, lot occupancy, and FAR variances are necessary in order to develop the overall site plan proposed for the Project. The site can not include fully compliant front, rear, and side yards, lot occupancy, and FAR and maintain the efficient layout proposed by the Project. Further, it would be possible to connect all of the currently proposed buildings into one building for zoning purposes and avoid the need for this requested relief. However, that approach would create buildings that would not properly fit with the surrounding neighborhood and would not be as attractive for the residents of the Project.

The location of the elements of this Project – the placements of the buildings, the accessways, and open spaces – is dictated by the lot lines and the existing alleys, streets, and buildings on the Property. The Project must fit the proposed structures onto the Property given the existing constraints both to maintain the proper scale of the project, and to satisfy the wishes of the District of Columbia Deputy Mayor for Economic Development, which desires certain larger sizes of housing for families. Therefore, the provision of fully-compliant front, rear, and side yards, and lot occupancy and FAR metrics for each building on each proposed theoretical lot would not be possible nor appropriate for the proposed townhouse community.

Generally, rather than providing private open space for each single unit, the Applicant is working to provide more public open space for the enjoyment of all residents

and guests. The resulting project will be a more preferable urban design for in-town living and less suburban.

It is also noteworthy that, in this case, many of the proposed rear yards are measured up to the interior alley system (which is in the C-2-A portion of the Property). In a matter-of-right development, the 20 foot wide private alley area could be included in the calculation of the required rear yard. Similarly, many of the proposed side yards are measured up to the interior alley system. If the Applicant were permitted to include portions of the alley system area in the calculation of those required side yards, no side yard variance would be necessary at those locations. Similarly, the interior alley system could not be utilized for the lot occupancy or FAR calculations for the C-2-A theoretical lots under Section 2516.6, as it would be able to be in a matter-of-right development.

In addition, the large areas of open green space throughout the Project provide the appearance of extremely large yards for the buildings located on these areas. The design intent of these areas is that all residents of the Project can enjoy such areas in addition to those areas surrounding their individual units.

(2) Number of parking spaces.

The R-5-A Zone District requires one parking space for each residential unit. While the Applicant is providing sufficient parking on the C-2-A zoned portion of the Property, the Applicant is proposing 16 parking spaces for 26 residential units on the R-5-A portion of the Property.<sup>9</sup> The Applicant is proposing 57 parking spaces in total on the Property to serve 60 residential units.

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<sup>9</sup> It is interesting to note that if the Project was an apartment building on an entirely C-2-A property, only one parking space would be required for each two units would be required and the project would therefore comply with the parking regulations.

Due to the extensive topography change of the R-5-A portion of the Property, the existing structures on that property, and the desire to keep as much green and recreational space for the residents as possible, the Applicant is unable to set aside any more space for parking. The Applicant does not wish to incur the additional expense and difficulty to excavate a space and build a related retaining wall for additional spaces or reduce valuable open space, particularly when they might not be utilized.

In addition, the Applicant does not want to reduce the size of the green space or yard areas that it has set aside for the residents. Each additional space or driveway area that would be provided for the Project would equate to an equivalent (or greater, given the need for retaining walls and other infrastructure) reduction in the green space or yards offered to individual residents. Given the lower usage of vehicles in this area of the City<sup>10</sup>, the substitution of green space for possibly underutilized parking spaces is desirable. As a matter of fact, the Applicant is essentially relocating a parking lot in the middle of the site and replacing it with a tot lot and green space.

Further, the Applicant would not be able to make further curb cuts on Eastern Avenue to access more parking spaces. Therefore, the provision of additional spaces would not be able to occur anywhere but on the alley, an area already fully-programmed in the proposed plan.

(3) Size of parking spaces (§2115.1 and 2115.10).

Similar to the reasoning regarding the provision of the required number of spaces, the odd configuration of the lot, the existing structures on the Property, and the steep

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<sup>10</sup> Information from DDOT/OP on Ward 7 vehicle ownership will be provided in our supplemental filing, if available.

topography have created a situation where the provision of full-sized parking spaces is not possible.

Further, as mentioned above, each additional square foot of parking takes a similarly sized (or greater) portion of the Property away from the green space and dedicated yard areas for the residential units. The Applicant believes that the proper balance has been reached between the current provision of parking space sizes and the amount of recreation and relaxation space in the Project.

In addition, the Applicant reduced the length of such parking spaces to allow greater width to the related accessways, particularly the north/south portion of the alley in Square 5260.

(4) Number of contiguous compact parking spaces.

The Zoning Regulations require that compact parking spaces are grouped together in a minimum of five parking spaces. In the instant case, two compact parking spaces are located adjacent to each other on the C-2-A portion of the Property. Similar to the relief described above, the Applicant does not wish to provide more surface parking than is necessary in order to maximize the amount of green space provided on the Property. Since these parking spaces are intended going to be utilized by residential units and their guests, no harm will result from having less than five contiguous parking spaces.

C. 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 detriment to the public good. As noted above, development on the Property with 60 new residential units will create a safer and more vibrant environment for the residents of the Deanwood neighborhood compared to the

vacant and abandoned site that currently exists. The proposed development is consistent in scale and bulk with the surrounding buildings and properties.

The variance from §2516 will not harm the public good or Zoning Plan. In fact, the Project is the type of well-designed townhouse community that the Zoning Regulations are intending to foster. The Project maximizes livable space and green open spaces, while still providing the proper amount of access and service space throughout the site. Granting the front, side, and rear yard, lot occupancy, and FAR variances for the theoretical lots will have no impact on neighbors or future residents of this Project, as significant buffering between internal and external buildings is provided. In fact, the Project proposes better urban design by maximizing the public areas over private yards. As noted, 27% of the site will remain green space upon completion of the Project.

Further, the variances related to parking (§§2101.1, 2115.1, 2115.4, and 2115.10) will not harm the public good or Zone Plan. Rather, these variances will allow a more efficient use of the Property, a greater amount of the Project to be devoted to open green space, and respond to the market for vehicles in the vicinity of the Property. It should also be noted that the Applicant is only requesting relief for the number of parking spaces on the R-5-A portion of the Property, and not the C-2-A portion of the Property.

Currently, the Office of Planning and the Zoning Commission are considering reducing the amounts of parking required throughout the district. The requested relief from the parking requirements is supported by the direction of the City's planning policies.

Specifically regarding the amount of parking provided, the Project includes an appropriate amount of parking spaces on the Property for residents and visitors/guests.

Also, a significant portion of the surrounding streets, including the adjacent segment of Dix Streets, NE, and adjacent blocks of Eastern Avenue, NE, allow Residential Permit Parking (RPP). As a result, there will not be any adverse impact on the availability of parking spaces in the adjacent neighborhood. In addition, car ownership in the vicinity of this Property is low for the District of Columbia<sup>11</sup>. Also importantly, the Property is well-served by public transportation. The Capitol Heights Metrorail Station is three blocks, or .37 miles, to the south of the Property, which includes seven bus lines in addition to the Metro's Blue Line. One bus line – the U8 bus line – makes a stop on Dix Street immediately adjacent to the Property. As stated, the Applicant has met with DDOT and will continue to work closely with DDOT as part of the Project to ensure sufficient parking and traffic considerations are included in the Project.

Regarding the grouping of compact parking spaces, residents will be familiar with the layout of the parking spaces, so no confusion will be created thereby. Further, such spaces will be labeled with all necessary signage.

Also, as mentioned these variances contribute to allowing the realization of an all affordable housing project approved by the District of Columbia Deputy Mayor for Economic Development's office. These variances will not undermine the intent of the Zone Plan by furnishing a more market-responsive Project that will serve a critical District need for more quality affordable housing

### **VIII. COMMUNITY DIALOGUE**

The Applicant is in the process of consulting with the local ANC, ANC 7C, and the Single Member District Commissioner throughout the BZA process and thereafter.

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<sup>11</sup> Awaiting information from DDOT on Ward 7 vehicle ownership.

## **IX. EXHIBIT IN SUPPORT OF APPLICATION**

- Exhibit A: Architectural plans – Site plan, lot plans, floor plans, elevations of the proposed development, and floor plans of the proposed residential units.
- Exhibit B: Civil engineering plans – Building layout and tabulation table, existing conditions, site plan, zoning tabulation, geometric layout plan, and grading plan.
- Exhibit C: Sanborn plats with the Property outlined in red.
- Exhibit D: Zoning map with the Property outlined in red.
- Exhibit E: Site context photographs.

## **X. CONCLUSION**

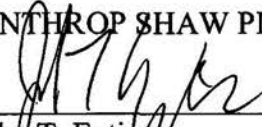
The Applicant will continue to meet with representatives of OP, DDOT, ANC 7C and members of the surrounding community throughout the BZA process and thereafter.

For all of the above-mentioned reasons, the Applicant has satisfied the legal standards for special exception and area variance relief and respectfully requests that the BZA approve this application.

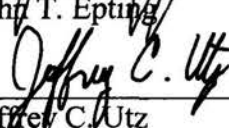
Respectfully submitted,

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