BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

VARIANCE APPLICATION **525 Park Road NW**
OF Park View Condominium Ventures LLC **BZA APPLICATION NO. 19148**

PREHEARING STATEMENT

I. Background

This Statement is submitted on behalf of Park View Condominium Ventures LLC ("Owner"), owner of the property located at 525 Park Road, NW (Square 3037, Lot 55) (the "Property"). As discussed more fully below, the Property's unique features and conditions justify the granting of area variance relief from lot occupancy requirements of Section 403.2, as strict compliance with the Zoning Regulations would result in a practical difficulty to the Applicant.

The Applicant purchased the property in September of 2015. Previous to purchase, the applicant completed their own due diligence, including review of the 1958 and 1968 Baist Maps which shows an residential structure on the property at the time the Zoning Regulations came into effect and the year that the existing 12-Unit Apartment Building was permitted and constructed. As a result of their own due diligence the applicant concluded that this property had been a "conversion" when constructed in 1968, which would hold the property to the 60% lot occupancy rule and therefore conforming at a proposed 49%. However, the Zoning Administrator ruled the building to be a "purpose built", twelve (12) unit apartment building. This conclusion was made, due to the original Certificate of Occupancy application from 1968 stating; the previous use of the property had been "vacant lot" (See exhibit). Previous to this ruling, the Applicant requested Special Exception Relief under Section 330.7 [more aptly 336.13, which was published after the time of filing], due to the belief, that relief for lot occupancy, was not required, but relief for the structural expansion of an existing apartment house was required. On January 4th, 2016, the Zoning Administrator ruled that the relief necessary to build this project, was relief from the lot occupancy requirements. Due to the Zoning Administrator's ruling, the Applicant has amending the application, and is now requesting area variance relief under Section 403.2.

II. <u>Burden of Proof</u>.

The burden of proof for an area variance is well established. The Applicant must demonstrate three elements: (1) unique physical aspect or other extraordinary or exceptional situation or condition of the property; (2) resulting in practical difficulty in complying with a strict application of the Zoning Regulations; and (3) no harm to the public good or the zone plan. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested area variance.

A. <u>Unique Physical Aspect or Other Extraordinary or Exceptional Situation or Condition of the Property that Results in a Practical Difficulty.</u>

Exceptional shape or contour of particular piece of property may be ground for granting area variance if strict application of zoning regulations would result in peculiar and exceptional practical difficulties to landowner. D.C.C.E. § 5-420(3). *A.L.W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428 (D.C. 1975). Furthermore, the Court of Appeals held in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition of the property. Rather, it may arise from a "confluence of factors."

The Property is afflicted by a confluence of factors, including but not limited to: (1) an irregularly-shaped lot; (2) an unusually large lot, measuring 9006 square feet; and (3) it is one of the only purpose-built apartment buildings and is an anomaly at only 33% existing lot occupancy. The confluence of the above mentioned factors creates a unique situation in which the Applicant would be unnecessarily burdened by strict application of the lot occupancy requirement, as discussed below.

B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty

Generally, to warrant granting area variance, it must be shown that strict compliance with area restrictions would be unnecessarily burdensome. *Palmer v. District of Columbia Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). The Court of Appeals has found that financial infeasibility rises to the level of a practical difficulty and satisfies the second prong of the area variance test. *See Downtown Cluster of Congregations v. District of Columbia Bd. Of Zoning Adjustment*, 675 A.2d 484 (D.C. 1996)(finding that an undue hardship existed because a tenant could not be located that offered a "reasonable rate of return to the owner"). In *Downtown Cluster,* the court heard testimony and upheld variance relief based on financial infeasibility, concluding that the 6% return the applicant could achieve as a matter of right was insufficient and the higher return that would be achieved had the applicant been granted relief, was a reasonable return. *Id.* At 487–89.

Additionally, the Court of Appeals affirmed the Board's approval of 100% parking relief for construction of a YMCA on a vacant lot based on a finding of practical difficulty due to the need to reduce the size of the swimming pool by half to provide parking at grade and the exorbitant cost of providing underground parking in comparison to such costs under ordinary circumstances. *See 1700 Block of N Street, N.W., et. al. v. District of Columbia Bd. of Zoning Adjustment*, 384 A.2d 674, 676 (D.C. 1978); *see also Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170-71 (D.C. 1990)("…1700 Block indicates that at some point economic harm becomes sufficient, at least when coupled with a significant limitation on the utility of the structure.”).

Because of the unique conditions associated with the Property, redevelopment will not be financially feasible without the requested relief. The additional relief provides the Applicant with enough space to build twelve marketable two-bedroom apartment units.

One alternative would to build twelve one-bedroom apartment units. This alternative presents significant practical difficulties. First, the construction costs of developing one-bedroom apartment units and two-bedroom apartment units are relatively similar; however, the fair market value of a two-bedroom unit significantly exceeds that of a one-bedroom unit. As shown on the attached financial projections, without the additional relief to provide two-bedroom units, the Applicant would likely not be able to break even and would realize a negative cash return on equity.

Additionally, this area is made up of mostly townhomes and other two-bedroom apartments and condominiums. From a marketing standpoint, the one-bedroom units would be hard to sell, as buyers looking to purchase a home in this area are likely to be interested in two-bedroom apartment units. Furthermore, if the Applicant were to attempt to recoup the costs of construction from the sale of the one-bedroom units, the units would necessarily be priced above fair market value. As shown on the attached financial projections and comps, there are reasonably priced two-bedroom units in the area. A potential buyer looking in this area is much more likely to be interested in purchasing a two-bedroom unit, and one-bedroom units priced above fair market value are highly unlikely to sell.

Another alternative would be to create fewer two-bedroom units. Not only will this alternative be financially infeasible, it is also impractical given the boxy, rectangular shape of the building and the structural wall. The additional 9% lot occupancy, provides enough additional space over the three floors, which when subtracted, results in the loss of more than two (2) marketable apartments. The loss of the two apartments aside, the Applicant is maintaining a large portion of the existing structure. In order preserve the structure, the Applicant must build around the structural wall bisecting the building, and continue that wall in the new additions. Without the additional 9% lot occupancy, the layout of the building and the wall makes it impractical to provide two-bedroom apartment units. Even if this layout is technically possible, from a financial standpoint, building two-bedroom units around this wall, without additional land area, will increase construction costs, and create a practical difficulty for the Applicant.

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

Granting relief will have no substantial detriment to the public good. As this area is made up of mostly two-bedroom apartments, granting relief will allow the redevelopment of an underutilized site, and will provide high-quality housing that will be harmonious with the neighborhood.

Granting an area variance from the strict requirements of 403.2 would result in no substantial impairment of the intent, purpose and integrity of the Zone Plan. The condition of this Property, with its location, shape, and other conditions, is extremely unique and will not lead to any unwanted precedents regarding lot occupancy relief.

IV. Conclusion.

For the reasons outlined in this Prehearing Statement, the Applicant respectfully requests the relief as detailed above.

Respectfully Submitted,

____

February 19, 2016