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February 29, 2015

Marnique Heath, Chairperson
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

**Re:** **Application No. 19187 — 1212–1218 4th Street NW (Square 513, Lots 155 and 156) Prehearing Statement of the Applicant**

Chairperson Heath and Honorable Members of the Board:

On behalf of 1212–1216 4th Street, LLC, please find enclosed the Prehearing Statement for the above-referenced application. The application is scheduled to be heard before the Board of Zoning Adjustment on March 15, 2016.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

By: Meridith H. Moldenhauer

Cc: Advisory Neighborhood Commission 6E
c/o Marge Maceda, Chair (via email)
Single Member District 6E04 Commissioner Rachelle Nigro (via email)
Office of Planning (via email)

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

| | |
|---|---|
| **APPLICATION OF** | **BZA APPLICATION NO. 19187** |
| **1212–1216 4th STREET, LLC** | **HEARING DATE: MARCH 15, 2016** |

**PREHEARING STATEMENT OF THE APPLICANT**

This Prehearing Statement is submitted on behalf of 1212–1216 4th Street, LLC (the "Applicant"), the owner of property located at 1212–1218 4th Street, NW (Square 513, Lots 155 and 156) (the "Property"), in support of its application for an area variance pursuant to § 3103.2 from the requirements regarding lot area (§ 401.11) and lot occupancy (§ 403.2) to allow expansion of an existing apartment building[1]. The Applicant also requests special exception relief pursuant to § 3104.1 for a change from one nonconforming use to another (§ 2003) to allow conversion of an office use to a neighborhood retail or service establishment in the R-4 Zone.

## I. EXHIBITS IN SUPPORT OF THE APPLICATION

| | |
|---|---|
| **Exhibit A:** | **Certificates of Occupancy for the Property** |
| **Exhibit B:** | **Revised Architectural Plans** |
| **Exhibit C:** | **Revised Financial Analysis** |
| **Exhibit D:** | **Public Hearing Transcript for *BZA Application No. 19148 of Park View Condominium Ventures LLC*** |
| **Exhibit E:** | **Public Hearing Transcript for Z.C. Case No. 14-11** |

## II. DESCRIPTION OF THE PROPERTY AND PROJECT SUMMARY

As explained in the initial submission, the Property consists of two contiguous lots in Square 513, which together has 9,936 square feet of land area. Lot 155, which includes 1212–

[1] The Applicant, to simplify the degree and areas of relief, is applying the more restrictive variance standard to the proposed development even though there are multiple uses at the Property, and the proposed development is more complex than a straightforward expansion of an existing apartment house. Note, 1212-1214 4th Street NW is an existing apartment house; 1216 4th Street NW is a mixed-use residential building with an office; and 1218 4th Street is a non-residential property with a history of fuel and oil pump related uses.

1214 and 1216 4th Street NW, has a land area of 6,335 square feet. It is currently improved with two adjoining buildings — a two-story apartment house with six units located at 1212–1214 4th Street and a two-story mixed-use building with an office on the first floor and two residential units above, located at 1216 4th Street. *See,* **BZA Exhibits 8B and 8C**, Building Permit Applications. The buildings are both contributing structures in the Mt. Vernon Square Historic District. Lot 155 is also improved with a large garage located in the rear. To the north of Lot 155, at the corner of 4th and Ridge Streets, sits Lot 156, also known as 1218 4th Street. Lot 156 has a land area of 3,600 square feet and is improved with a garage that has been used for various commercial uses over the years.

Both Lot 155 and Lot 156 have a long history of non-residential uses postdating 1958. In 1961, Lot 156 was granted a Certificate of Occupancy for a gas pump and storage facility for trucks and cars. *See* Certificates of Occupancy at **Exhibit A**.[2] Further, in 1964, the lot was granted another Certificate of Occupancy for Lucky Liquors, Inc., to operate a retail beverage store with food and tobacco products. *Id.* In 1974, Lot 155 was granted a Certificate of Occupancy to operate a taxicab office at 1216 4th Street. *Id.* In 1978, the lot was granted a new Certificate of Occupancy to operate a general cleaning office there. *Id.* These are the most recent Certificates of Occupancy available on record for the Property.

**Summary of Uses at the Property**

| 1212-1214 4th Street NW<br>Purpose built apartment house | 1216 4th Street NW<br>Mixed-use residential plus office | 1218 4th Street NW<br>Commercial |
|---|---|---|
| • Residential | • Office<br>• Taxicab office<br>• General cleaning office | • Retail beverage store, food and tobacco products<br>• Bulk fuel oil meters, gasoline pump and storage for trucks and cars in rear |

[2] The Certificates of Occupancy cited refer to previous lot numbers, but the addresses correspond to the current addresses for the Property.

The Applicant proposes to combine the two lots. Thus, for the purposes of the proposed project, all of the prior uses would be a part of a new subdivided record lot on which the project is planned. After subdivision, the garages will be removed, and the project will renovate and expand the existing residential and mixed-use buildings while preserving the historic structures. The result will be a single three-story structure that will include residential condominium units and a modest space on the ground floor for a small-scale neighborhood-servicing retail use (the "Project").

## III. COMMUNITY OUTREACH AND REVISED PLANS

In April 2015, prior to filing this BZA application, the Applicant presented an initial design concept to the community at a meeting organized by Commissioner Rachelle Nigro, the representative for Advisory Neighborhood Commission ("ANC") Single Member District ("SMD") 6E04. Comments received in that meeting influenced the design submitted with the initial application, including reduced massing for the proposed structure, a revised façade, material modifications, and removal of a penthouse. The community also specifically requested that the Project include space for a small neighborhood-servicing retail establishment, which the Applicant incorporated into the plans.

Since filing the application last November, the Applicant has continued to meet with the community and has made significant design and structural changes in response to further feedback on the Project. *See,* Revised Architectural Plans at **Exhibit B**. The Applicant has attended two additional SMD meetings, a meeting with ANC 6E's Development and Zoning Committee, and an ANC 6E General Body meeting. The Applicant will be attending a second ANC 6E General Body meeting on March 1st. The Applicant has also met with the District

Department of Transportation ("DDOT") and has been in communication with the Office of Planning ("OP") and the Historic Preservation Office ("HPO").

During the SMD meetings, the community requested that the Applicant provide more parking than was proposed to ensure that the neighborhood's parking dilemma did not worsen as a result of the Project. Further, the community asked that the Project provide a less dense project with respect to the number of units. In accordance with these comments, the Applicant has dramatically revised the project from a 26-unit building with nine parking spaces to a 22-unit building with 31 parking spaces, most of which will be provided in a below-grade parking level. These revisions were made in direct response to the community's comments.

## III. APPLICANT MEETS THE BURDEN OF PROOF FOR A SPECIAL EXCEPTION

While this Prehearing Statement focuses primarily on the requested area variances, the application also seeks a special exception under § 2003 to convert a nonconforming office use to a nonconforming retail or service establishment. As explained in the initial submission, the application meets all of the requirements for relief under § 2003, which permits a change to any nonconforming use permitted as a matter of right in the most restrictive zone district in which the existing nonconforming use is permitted by right. Here, the Property has been devoted to a number of nonconforming commercial uses, including a general cleaning office use at 1216 4th Street. *See* **Exhibit A**. The C-1 District is the most restrictive district in which an office use is permitted by right, and the Applicant proposes to convert to a small retail or service use that is also permitted by right in the C-1 District, such as a coffee shop, bike repair shop, bakery, or dry cleaner.

To note, OP contends that this conversion requires a use variance based on an alleged abandonment of the prior nonconforming office use. Under the regulations, an owner may not resume operation as a nonconforming use once it has been abandoned. 11 DCMR § 2005.1. To establish abandonment, "the law requires more than mere lapse of time or 'discontinued use.'" *Appeal No. 17902 of Joseph Park* (2009). Rather, demonstrating abandonment requires proving "(1) the intent to abandon, and (2) some act or failure to act which carries the implication of abandonment." *Id.* (quoting *George Wash. Univ. v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1345 (D.C. 1981)). Under § 2005.1, discontinuance of the use for three years or more is considered prima facie evidence of abandonment. *Id.* However, as the Board explained in the *Park* case, such prima facie evidence merely creates a presumption of abandonment. This presumption is not conclusive but rather is "rebuttable, i.e., can be contradicted, if the owner of the nonconforming use can make the appropriate showing that he did not intend" to abandon the use. *Id.*

The Applicant asserts that the Project meets the requirements for a special exception under § 2003. However, should the Board determine that there is prima facie evidence of discontinuance; the Applicant will provide evidence as necessary to demonstrate that there was no abandonment of the prior nonconforming office use on the Property.

## IV. THE APPLICANT MEETS THE BURDEN OF PROOF FOR AREA VARIANCES

As discussed in the initial submission, the Applicant requests area variances for lot area and lot occupancy. The Board is authorized to grant an area variance where it finds that the application meets the Court of Appeals' familiar three-prong standard. As described in the initial submission, supplemented in this Prehearing Statement, and as will be further demonstrated at the public hearing, this application satisfies all three prongs of the variance test.

### A. Applicable Standards

Before addressing the specific areas of relief requested, it is instructive to review the applicable standards in the R-4 District, important developments in those standards, and the unique status of this Project under those standards.

*1. Background Regarding the New R-4 Regulations*

Last year, the Zoning Commission adopted substantial amendments to the regulations governing the R-4 District in Z.C. Case No. 14-11 (the "R-4 Amendments"). The Commission adopted the R-4 Amendments on June 8, 2015, and they became effective upon publication in the *D.C. Register* on June 26, 2015. The R-4 Amendments provide new standards for conversions of both residential and non-residential structures to apartment houses, now governed under new §§ 330.7, 336, and 337. It was not until late October 2015 that the Board held hearings on the first applications that involved any of the new provisions. *See Application No. 19057 of Hollow Creek Investment Group, LLC* (first hearing considering relief under § 337 on October 6, 2015) *Application No. 19093 of Warder LLC* (first hearing on October 27, 2015); *Application No. 19094 of 28th Street Partners, LLC* (first hearing also on October 27, 2015). The Applicant filed the instant application on November 9, 2015.

Since the adoption of the R-4 Amendments, there has been further clarification regarding whether a particular project is considered a "conversion" under the regulations. For instance, on December 22, 2015, the Board considered *Application No. 19148 of Park View Condominium Ventures LLC* (decision pending), in which the applicant requested a special exception under new § 337 to allow expansion of an existing 12-unit apartment house[3]. At the hearing, the Zoning Administrator provided testimony, at the Board's request, regarding whether the project was eligible for the 60% lot occupancy limit applicable to conversions to apartment houses. *See*

[3]OP, in its initial report, was unable to reach a recommendation because the Zoning Administrator had advised OP that the project would result in a lot occupancy of 49%, above the 40% permitted under § 403.2. *See Application No. 19148*, Exhibit 31.

Public Hearing Transcript for *Application No. 19148*, Dec. 22, 2015, Tr. at 25:1–26:12, at **Exhibit D**. The Zoning Administrator stated that, because the property in that case is improved with a 12-unit apartment house that was constructed as an apartment house, the project was not considered a conversion, but rather would be an expansion of a "purpose built" apartment building, a term increasingly used to distinguish expansions from conversions. *Id.*

### 2. *New Special Exception for Minimum Lot Area Under Section 337*

Under the R-4 Amendments, § 330.7 provides certain area requirements for a matter-of-right conversion of a non-residential building in existence prior to May 12, 1958 (in addition to the requirements outlined in §§ 400–413). Section 337 provides a special exception for the requirements in § 330.7, including the requirement under § 330.7(c) that there be a minimum of 900 square feet of land area per dwelling unit.

The Zoning Commission adopted § 337 pursuant to OP's recommendation, which was motivated by a desire to encourage conversions of non-residential structures in the R-4 District, acknowledging the challenges such conversions often face. *See* Public Hearing for Z.C. Case No. 14-11, Mar. 30, 2015, Tr. at 156:5–24 (OP Deputy Director Jennifer Steingasser stating, "We were trying to make the development of nonresidential buildings easier. . . . [W]e were trying to find a way to incentivize the redevelopment and adaptive reuse of these structures . . . . [W]e found that the trigger was 900 square feet. And so rather than make that go through a variance, to try to do that by special exception."). Importantly, while the Zoning Commission created a special exception for minimum lot area requirements for non-residential conversions, it deliberately declined to provide the same relief for conversion of a residential building to an apartment house.

### 3. *The Property's Unique Hybrid Character and Other Exceptional Conditions*

The Property in this case is unique in that it is presently improved with a purpose-built apartment house, a mixed-use building devoted to both office and residential uses, and a non-residential garage devoted to commercial uses. This results in the Project being an unusual hybrid development — partly a conversion of a non-residential structure and partly an expansion of a purpose-built apartment house. Notably, the R-4 Amendments do not contemplate hybrid projects like this one. In neither its discussions in the proceedings for Case No. 14-11 nor in the text of the adopted amendments, did the Zoning Commission address the issue of hybrids. Further, in none of the first applications filed with the Board for relief under new § 337 was there any contemplation that the standards for conversions of non-residential buildings and the standards for expansions of existing purpose-built apartment houses could be merged in a single case, such as this one. Hybrid developments simply were not contemplated when the R-4 Amendments were adopted, nor have any hybrids been considered since the new regulations went into effect.

However, since § 337 only applies to conversions of non-residential buildings, not to expansions of existing "purpose-built" apartment houses, and a significant portion of the Project is the expansion of a purpose-built apartment building, the Applicant in an effort to simplify this extraordinary circumstance, is voluntarily subjecting itself to the higher variance standard, which is satisfied based on this submission and the initial application.

In addition to the Property's unique mix of uses and the resulting hybrid nature of the Project, the Property is also affected by an exceptional condition as a result of a confluence of the following factors, discussed in the Applicant's initial submission: (1) unusual lot configuration and the Property's exceptionally large size at the corner of two streets; (2) highly inefficient interior configuration of the existing structures; (3) the Property's severely dilapidated condition, including electrical and water damage and collapsed ceilings and stairs; (4) status as a contributing property in the Mt. Vernon Square Historic District and consequent 20-foot setback requirement; and (5) the pattern of nonconforming uses to which the Property has been devoted, including various types of offices, an oil and gas facility, and automobile storage.

### B. Relief for Lot Area

Under § 401.11, an existing apartment house may not be expanded to increase the number of dwelling units unless there are 900 square feet of land area for each dwelling unit. With 9,954 square feet of land area, the Property is permitted 11 units as a matter of right. The Project, as designed, would have 22 units (reduced from 26), resulting in approximately 453 square feet of land area per unit. This deviation is well within the range of relief the Board has granted in prior cases, as shown in the table below:

| Case No. | Address | No. of Units | Lot Area (sq. ft.) | Lot Area per Unit (sq. ft.) | Decision Date |
|---|---|---|---|---|---|
| **19187** | 1212–1218 4th St. NW | 22 | 9,954 | 453 | *Pending* |
| **19057** | 1851 9th St. NW | 27 | 6,641 | 239 | 10/6/2015 |
| **18794** | 1740 New Jersey Ave. NW | 6 | 1,685 | 280 | 10/28/2014 |
| **18800** | 625 Park Rd. NW | 38 | 1,649 | 206 | 7/22/2014 |
| **18724** | 819 D St. NE | 30 | 11,458 | 382 | 3/11/2014 |
| **18562** | 1538 New Jersey Ave. NW | 6 | 2,255 | 376 | 7/9/2013 |
| **18515** | 200 5th St., SE | 6 | 1,101 | 184 | 3/12/2013 |
| **18055** | 304 Q St. NW | 4 | 896 | 224 | 4/20/2010 |

#### *1. Practical Difficulty*

As discussed above, the Property's unusual mix of uses and the resulting hybrid character of the Project place the Project in an unusually difficult posture within the regulatory framework. If the Project were solely a non-residential conversion, it would be eligible for special exception relief from minimum lot area requirements under § 337. However, because the Project also expands an existing purpose-built apartment house, it is not eligible for this special exception, despite facing challenges similar to those posed for pure non-residential conversions. Most notably, as is often the case for conversions, renovation of the existing buildings on the Property will require resolving the current internal configuration, which does not lend itself to residential uses. Such design challenges, along with preservation requirements, make rehabilitation of sites like this one especially difficult. These difficulties are only exacerbated by the minimum lot area requirement. Again, were it not for the Project's unusual hybrid character, relief for this requirement could be sought as a special exception.

*2. The Relief Is Necessary for the Project to be Financially Feasible*

The Applicant, before and after filing the Initial Application, has worked with the community and responded to their major concerns by making substantial revisions to the Project. The Applicant initially contemplated a well-appointed condominium building with standard features and standard unit sizes. Under the original design, only nine units had the option to purchase a parking space. In light of the Property's severely dilapidated state and the need to take measures to preserve the existing historic structures, 26 units were necessary for the proposed development to be financially feasible. At the urging of the community, the Applicant has reimagined the Project and recast the building as a high-end condominium with fewer but larger units. Most importantly, each of the units will have the option to purchase a parking space. Under the modified design, the cost of constructing one floor of below grade parking is outweighed by the benefit of having higher-end units. Consequently, the proposed development as currently designed is financially feasible with 22 units. Alternative design options, as explained below, fail to net a sufficient profit to make the project financially feasible, and thus result in a financial hardship for the Applicant.

It is important to note that the Board has repeatedly found financial hardship to be a practical difficulty in variance cases. *See, Application No. 17446 of Pauline S. Ney (2006)* (approving area variances to construct new residential units on underutilized property after finding economic burden was a practical difficulty for the applicant); *Application No. 16573 of Martin E. Hardy (2000)*(approving substantial variance relief and finding that the "Board **may consider the economic hardship** in evaluating the applicant's practical difficulties, and **find practical difficulty** where strict compliance with the Zoning Regulations would result in a substantial increase in the cost of the proposed construction plus a significant limitation in the property's overall utility")(emphasis added).

The Board's analysis and consideration of financial feasibility in determining whether or not a practical difficulty exists in a variance case has been confirmed and supported by the DC Court of Appeals on several occasions. The Court of Appeals has repeatedly held that the "economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases" *Tyler, et. al. v. District of Columbia Board of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992)(internal citations removed)(*Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990)(Reiterating in the context of an FAR and height variance that "increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration."). In *Association for Preservation of 1700 Block of N St., N.W. & Vicinity v. District of Columbia Bd. of Zoning Adjustment*, the Court confirmed that at a given point economic harm becomes sufficient, when coupled with a significant limitation on the utility of the existing structure or property, to satisfy the variance standard. 384 A.2d 674 (D.C. 1978)(Finding practical difficulty where a YMCA ***could*** build a structure that compiled with offstreet parking requirements by reducing its size and programming but was ***not economically feasible or cost-effective***). (Emphasis added). In *Wolf v. District of Columbia Bd. of Zoning Adjustment*, the Court of Appeals upheld a Board decision granting an area variance to permit conversion to a three-unit rental apartment where "marketability" of the property would otherwise be "unfeasible" and ***investment would yield loss rather than profit***. 397 A.2d 936 (D.C. 1979)(Upholding approval of a lot area variance for conversion of a two-family dwelling to a three-unit apartment building where a two-family dwelling was not marketable and monthly expenses would out pace annual rental income). (Emphasis added).

As shown in the attached Profit and Loss Analysis at **Exhibit C**, and as will be further testified to at the hearing, a matter of right project that complies with the Zoning Regulations is not an economically feasible option. The Property, with a lot area of 9,955 square feet can only have 11 units as a matter of right under the Zoning Regulations. As the Property is located in the Mt. Vernon Square Historic District, many of those 11 units would have to be in the existing structures that currently improve the Property. The Applicant cannot demolish the existing structures and build a new efficiently designed development. The cost of a matter-of-right project that would include site cleanup, removal of obsolete and nonfunctional equipment, removal of a fuel storage tank, rewiring the entire existing structure with a new electrical system, remediation and prevention of water damage, excavation and earthwork, and foundation and roofing work results in a net gain of only 0.68%. A return of 0.68% is not an economically feasible project.

The development of the Property remains financially unfeasible even if the Applicant were to obtain a variance to increase the lot occupancy to 75% *and* a variance to construct 15 units. With 15 units and 75% lot occupancy, the project nets a return of only 3.08%. As the Profit and Loss Analysis demonstrates, the alternatives to the Project provide an unreasonable return based on the projected sale price of units relative to the total investment required to bring the existing structures up to Building Code, comply with the requirements of historic preservation, and create marketable units on the remaining land area. Denial of the variance application creates an unnecessarily burdensome financial hardship on the Applicant, results in insufficient returns, and makes the Project unfeasible.

*3. No Detriment to the Public Good or Impairment of the Zone Plan*

As discussed in the Applicant's initial submission, granting the requested relief will not result in any detriment to the public good or any substantial impairment of the intent, purpose, and integrity of the zone plan. The Project takes a neglected property and reinvigorates it with the construction of a well-designed residential building. The Project has the backing of the surrounding community and has benefitted from community input both before and following the filing of this application. Among the changes made pursuant to community comments is the inclusion of a small ground-floor commercial space for a neighborhood-servicing retail establishment. The result of the community's thoughtful participation in the evolution of the Project is a development that will serve to reinforce and strengthen the community by reactivating a parcel that is currently an eyesore detracting from the quality of the neighborhood.

Further, the Project's density will not have an adverse impact on the surrounding area. The Property, sitting on a corner lot on 4th Street NW, is in a centrally located area nestled between the Convention Center to the west, Downtown to the south, and New York Avenue running east. As explained in the initial submission, while Square 513 is zoned R-4, it is bordered by higher density R-5-B and DD/R-5-B Districts, with the C-2-C District just two blocks south. Accordingly, the Project will serve as a bookend for the block amidst these higher density areas.

Lastly, the Project does not contradict the zone plan as embodied in the minimum lot area requirement, a requirement expressly reaffirmed in the R-4 Amendments. As discussed above, when the Zoning Commission adopted the R-4 Amendments, it carved out a special exception for this requirement for conversions of non-residential buildings under § 337 in order to encourage non-residential conversions in the R-4 District. While the Zoning Commission deliberately declined to provide similar relief for conversions of residential buildings, the discussions in the proceedings for Case No. 14-11 did not contemplate or address the issue of hybrid projects like this one, which are part purpose-built expansion and part non-residential conversion. The Applicant submits that, though this Project is not technically eligible for a special exception under § 337 due to its hybrid character, granting relief for lot area requirements will be within the spirit of the R-4 regulations, as adopted in Case No. 14-11, because the Project rehabilitates and adaptively reuses property previously devoted to non-residential uses. Accordingly, a variance can be granted without substantial detriment to the zone plan.

### C. Relief for Lot Occupancy

The Project will combine existing Lots 155 and 156 in Square 513. As previously stated, Lot 155 is currently improved with an apartment house, a mixed-use building, and a garage. As to this lot, the Project is an expansion of a purpose-built apartment house and mixed-use residential with nonresidential office on the first floor. Lot 156 is improved with only a garage that has been devoted to various commercial uses. As to this lot, the Project is a conversion of a non-residential structure. Under § 403.2, expansions of existing apartment buildings are limited to 40% lot occupancy, and conversions are permitted 60% lot occupancy. However, § 403.2 is silent as to which standard applies to hybrid projects that are part expansion, part conversion. The Project proposes a lot occupancy of 75%.

*1. The Project's Unique Hybrid Character and Corner Lot Location*

The Project's hybrid character, resulting from the Property's unique mix of uses, also makes the degree of relief needed for lot occupancy requirements potentially greater than would be the case if the Project were solely a non-residential conversion. Conversions are permitted 60% lot occupancy while expansions of existing apartment houses are limited to 40% lot occupancy. However, the Zoning Regulations' treatment of hybrid projects is unknown and the more stringent standard is not clearly required in this respect as well. Further, in addition to the factors discussed in the initial submission that contribute to the Property being exceptional, the Property's corner location also results in it having an unusually large amount of street frontage — 100 feet along Ridge Street and 99.5 feet along 4th Street.

*2. Practical Difficulty*

For the same reasons discussed above, the relief requested for lot occupancy restrictions is necessary for the Project to be financially feasible. Specifically, the additional lot occupancy is needed to subsidize the base renovation costs for the Project, including preservation of the historic structures, structural repairs, site cleanup, and remediation of water damage.

Further, the Property's corner location and consequential abundance of street frontage poses a practical difficulty in designing the Project. In developing a design that seeks to achieve urban planning objectives, the Applicant has gone to great efforts to activate the Property's street frontage. While the Project will preserve the orientation of the existing historic facades along 4th Street and extend this façade to the end of the block, which is currently vacant, it will also enhance the frontage along Ridge Street, where the Property currently displays a dilapidated garage. The Project's design replaces this eyesore with a façade that mimics that of a cluster of townhouses and extends the rhythm of the existing streetscape along Ridge Street all the way to the end of the block. In pursuit of this goal, the Applicant has also strategically concealed the proposed parking area in the rear of the Property and placed the driveway to this area to be directly parallel to a similar driveway across Ridge Street. While this design scheme will reinforce and strengthen both 4th and Ridge Streets, it also requires the Property to consume and exceed the allowable lot occupancy.

*3. No Detriment to the Public Good or Impairment of the Zone Plan*

As discussed above, the Project will not have any adverse effect on either the public good or the zone plan. To the contrary, the Project will rehabilitate a neglected property so as to strengthen both 4th Street and Ridge Street. The Project removes an eyesore from Ridge Street and extends the character of the street to the end of the block. In doing so, the Project achieves urban planning principles by activating the streetscape, while still maintaining the character of the surrounding area.

## VII. WITNESSES

The following witnesses will appear on behalf of the Applicant:

1. Dr. Sahr Bockai, on behalf of the Applicant
2. Ronald Schneck, Architect on behalf of Square 134 Architects
3. Any other witnesses as deemed necessary

## VIII. CONCLUSION

For the reasons stated above, and for the reasons enumerated in the Applicant's prior submission, we hereby submit that the application meets the requirements for the relief requested.

We look forward to presenting our case to the Board on March 15, 2015.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

Meridith H. Moldenhauer
1912 Sunderland Place, N.W.
Washington, D.C. 20036
(202) 429-9000

# Exhibit A

Form LI-9-401 CERTIFICATE OF OCCUPANCY No. B 28945

Washington, D.C., JUNE 13, 19 61

Permission is hereby granted to AMATO INC.

to use the LOT floor(s) of the building located on Lot 897 Square 513

known as premises REAR-1218-20 4TH STREET, N.W. for the following

purpose(s): 3 BULK FUEL OIL METERS, 1 GASOLINE PUMP AND STORAGE FOR TRUCKS & CARS IN REAR

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

DEPT. OF LICENSES & INSPECTIONS, GOV'T. OF DIST. OF COL.

ZONE R-4 FEE $ 10.00

Chief, Permit Branch

By Pat [signature]

OFFICE COPY

Form LI-P-401.

**CERTIFICATE OF OCCUPANCY** No. B 47466

Washington, D.C., AUGUST 7TH, 1964

Permission is hereby granted to LUCKY LIQUORS, INC.

to use the FIRST floor(s) of the building located on Lot 897 Square 513

known as premises 1218 24TH STREET, N.W. for the following

purpose(s): RETAIL BEVERAGE STORE, FOOD AND TOBACCO PRODUCTS

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s) indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

DEPT. OF LICENSES & INSPECTIONS, GOVT. OF DIST. OF COL.

ZONE R-4 FEE $10.00

Chief, Permit Branch

By [illegible]
Permit Clerk

**SEE IMPORTANT NOTICE ON REVERSE SIDE HEREOF** OFFICE COPY

Form ED-P-651

# CERTIFICATE OF OCCUPANCY

No. B107666

Washington, D.C., 9-19, 1978

Permission is hereby granted to A B C Cab Corporation

to use the Basement & 1st floor(s) of the building located on Lot 835 Square 513

known as premises 1216 4th St NW for the following

purpose(s): Taxicab office

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

DEPT. OF ECONOMIC DEVELOPMENT, GOV'T. OF DIST. OF COL.

ZONE

ZA

FEE $0.00

Chief, Permit Branch

By [signature] Permit Clerk

OFFICE COPY.

Form LII-P-601
(Rev 9-78)

**CERTIFICATE OF OCCUPANCY**

No. B117701

Washington, D.C., Nov. 13, 19 79

Permission is hereby granted to McKinley Battle

to use the 1st floor floor(s) of the building located on lot 835 Square 513

known as premises 1216 4th St. NW for the following

purpose(s): General Cleaning Office

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS GOV'T. OF DIST. OF COL.

ZONE R-4

FEE $ 20.00

Chief, Permit Branch

By Claude Brown

Permit Clerk

OFFICE COPY.

Form 11-9-60) CERTIFICATE OF OCCUPANCY No. B 27357

Washington, D.C., MARCH 10TH, 1961

Permission is hereby granted to AMATO, INC.

to use the FIRST floor(s) of the building located on Lot 835 Square 513

known as premises 1216 4TH STREET, N.W. for the following

purpose(s): OFFICE

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

DEPT. OF LICENSES & INSPECTIONS, GOV'T. OF DIST. OF COL.

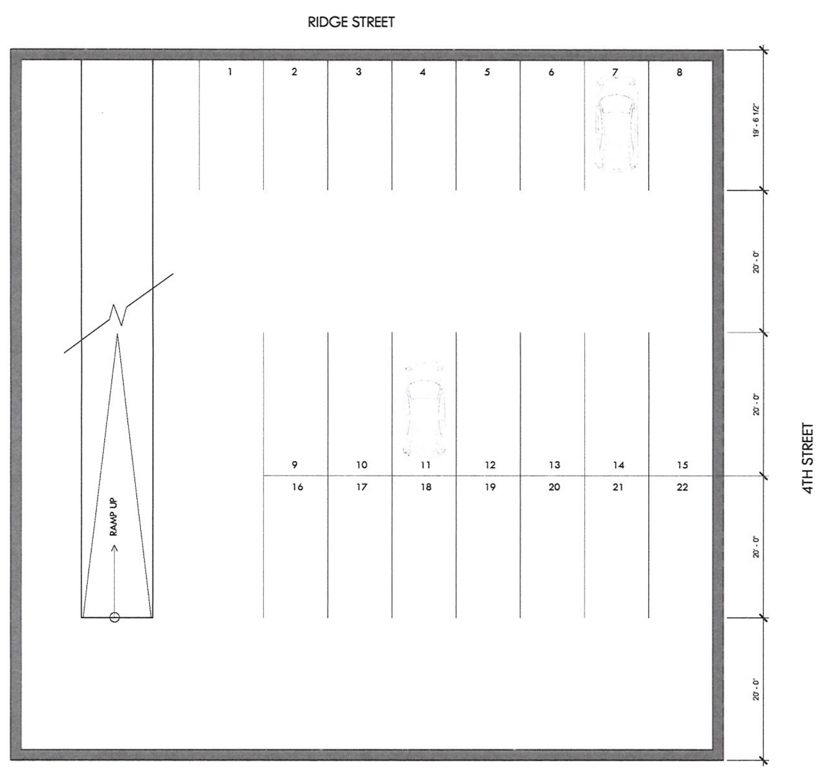
ZONE R-4 FEE $ 10.00

Chief, Permit Branch

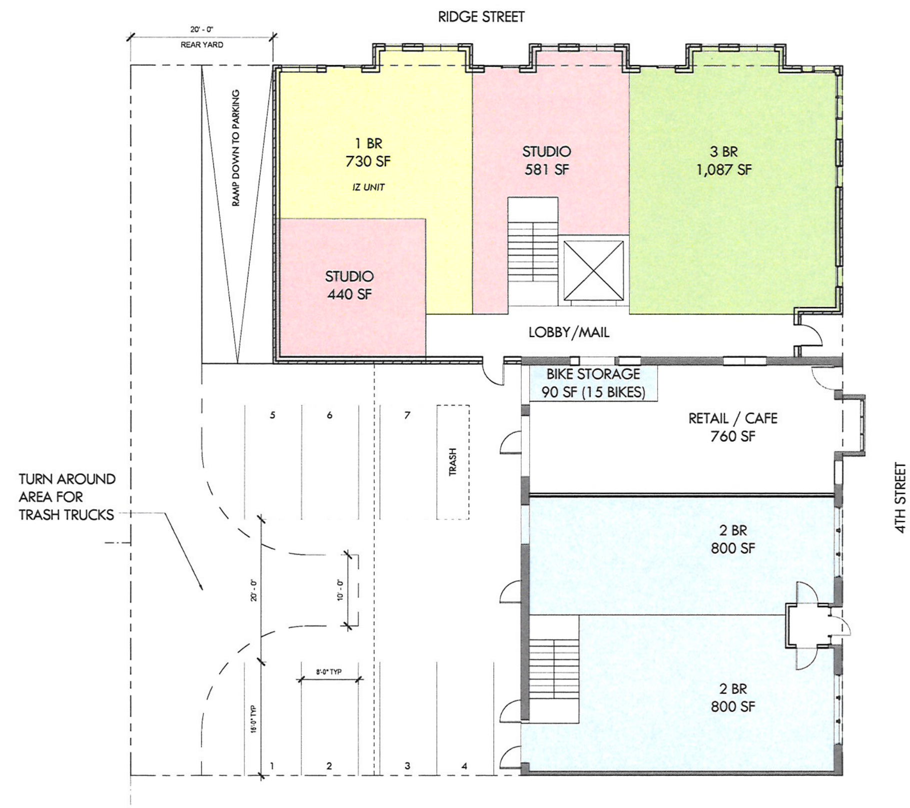
By Mary D. Savage
Permit Clerk

OFFICE COPY

# Exhibit B




00 PARKING LEVEL - PROPOSED
1/8" = 1'-0"




01 FIRST LEVEL - PROPOSED
1/8" = 1'-0"

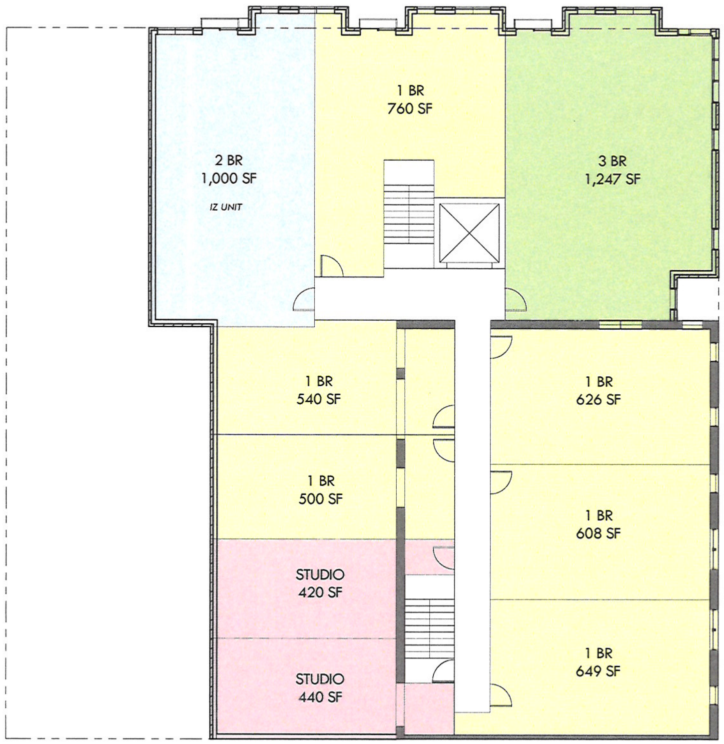
| **PROPOSED UNIT COUNT : 22 TOTAL** | | **IZ UNITS** | |
|---|---|---|---|
| STUDIO: | 4 | STUDIO: | 0 |
| 1-BR: | 11 | 1-BR: | 1 @ 730 SF |
| 2-BR: | 4 | 2-BR: | 1 @ 1,000 SF |
| 3-BR: | 3 | 3-BR: | 0 |
| PARK: | 7 SPACES @ GRADE<br>22 SPACES BELOW GRADE | TOTAL GSF = 17,250 GSF<br>10 % (GSF) = 1,725 GSF = OK | |
| | **29 TOTAL** | | |

134
SQUARE 134 ARCHITECTS
1501 11th Street NW, Suite 3, Washington DC 20001
202. 328. 0134

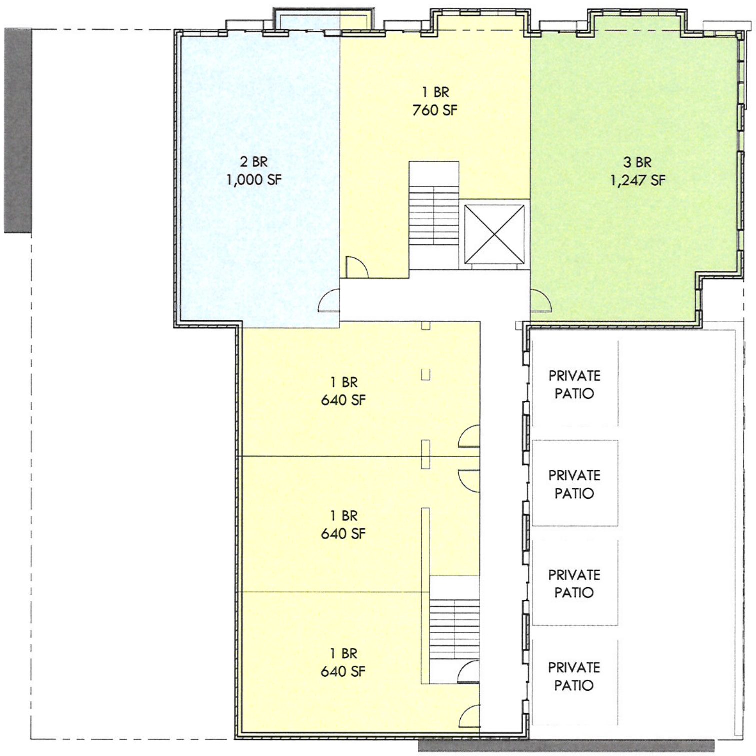
**1212 - 1214 4th Street NW**
**Washington, DC 20001**

FLOOR PLANS - PARKING AND FIRST LEVELS
01/27/16

SCALE
1/8" = 1'-0"




02 SECOND LEVEL - PROPOSED
1/8" = 1'-0"




03 THIRD LEVEL - PROPOSED
1/8" = 1'-0"

**PROPOSED UNIT COUNT : 22 TOTAL**

| | |
|---|---|
| STUDIO: | 4 |
| 1-BR: | 11 |
| 2-BR: | 4 |
| 3-BR: | 3 |
| PARK: | 9 SPACES @ GRADE<br>22 SPACES BELOW GRADE |

**IZ UNITS**

| | |
|---|---|
| STUDIO: | 0 |
| 1-BR: | 1 @ 730 SF |
| 2-BR: | 1 @ 1,000 SF |
| 3-BR: | 0 |

TOTAL GSF = 17,250 GSF
10 % (GSF) = 1,725 GSF = OK


134
SQUARE 134 ARCHITECTS
1501 11th Street NW, Suite 3, Washington DC 20001
202. 328. 0134


**1212 - 1214 4th Street NW**
**Washington, DC 20001**

FLOOR PLANS - SECOND AND THIRD LEVELS
01/27/16

SCALE
1/8" = 1'-0"

# Exhibit C

**Project: 1212-1218 4th Street**
**Owner: Sahr Bockai**

## Profit and Loss Analysis Schedule
## (Condominium Sale)

| Description | Scenario 1<br>11 units (40% Lot Occupancy) | | Scenario 2<br>15 units (75% Lot Occupancy) | | Scenario 3<br>22 units |
|---|---|---|---|---|---|
| **Gross Sales** | **$5,872,989.00** | | **$10,203,040.00** | | **$12,105,813.00** |
| | | | | | |
| Purchase Price | $1,443,000.00 | | $1,443,000.00 | | $1,443,000.00 |
| Closing Costs | $57,720.00 | | $57,720.00 | | $57,720.00 |
| Hard construction costs | 2,941,900.00 | | $6,491,961.00 | | $6,491,961.00 |
| Soft cost estimate | $980,000.00 | | $1,150,000.00 | | $1,279,000.00 |
| Parking | $ - | | $ - | | $ 686,000.00 |
| **Project Cost** | **$5,422,620.00** | | **$9,142,681.00** | | **$9,957,681.00** |
| | | | | | |
| Selling transaction costs | $411,109.23 | | $714,212.80 | | $847,406.88 |
| Warranty Bond | $294,190.00 | | $649,196.10 | | $649,196.10 |
| Ongoing Warranty Costs | $20,000.00 | | $30,000.00 | | $50,000.00 |
| Taxes | $12,265.50 | | $12,265.50 | | $12,265.50 |
| Insurance | $50,000.00 | | $50,000.00 | | $50,000.00 |
| Common Utilities | $28,000.00 | | $28,560.00 | | $29,131.20 |
| Trash | $9,000.00 | | $9,000.00 | | $9,000.00 |
| | | | | | |
| Total Project Cost | **$5,836,075.50** | | **$9,921,702.60** | | **$11,604,680.68** |
| **Profit(Deficit)** | **$36,913.50** | | **$281,337.40** | | **$501,132.32** |
| **Profit margin +/-%** | **0.68%** | | **3.08%** | | **5.03%** |

| | | | | | |
|---|---|---|---|---|---|
| **Assumptions for Above Scenarios** | | | | | |
| Sales Per SFT | $600 | | $560 | | $625 |
| IZ 1 BR 50% | $115,000 | | $115,000 | | $115,000 |
| IZ 2BR 80% | | | $250,000 | | $250,000 |
| | | | | | |
| Sale of Parking | $320,000 | | $320,000 | | $1,118,000 |

# Exhibit D

CHAIRPERSON HEATH: Okay. Okay. We also have the Zoning Administrator here, and at some point, if not now, we may call him to the table to address this.

MR. WOODILL: We might add that we just spoke to Mr. LeGrant. We have a long relationship with Mr. LeGrant and we've rarely if ever disagreed. But I think this may be the one time that we agree to disagree.

CHAIRPERSON HEATH: Okay. All right. So you're going to go forward with the request for special exception for the residential conversion?

MR. CROSS: Given the amount of ambiguity both in the state of the rewrite of the codes and the information on the property, we felt that we might as well proceed because it seemed like something that wasn't exactly clear to be handled at any other level, so we just hold our appointment here today and give you the information. And if we can proceed, great.

CHAIRPERSON HEATH: Okay. We will proceed, but what I'd like to do before you proceed with any presentation is call Mr. LeGrant to the table if he's willing to address this issue of the requested relief.

MR. LeGRANT: Good morning, Members of the Board and the public. Again, Matt LeGrant, Zoning Administrator, DCRA. I wasn't planning to address the Board on this case. It's sort of out of usual order for me to opine on an application. But I understand the situation. It's -- the key here is what drives how this will be regulated, is how whether the building that's there today, a 12 unit apartment building, was previously converted from one use to the present use, or if the 12 unit apartment building was -- that is there, was originally built in that building as that use. And the term that we're increasingly using, if it was purpose built as a 12 unit apartment building.

The Zoning Regulations specify a specific lot occupancy in the R-4 district, and as many of the members of the Board may recall, it's a conversion then the standard is the greater of 60 percent, or the lot occupancy existing at the time of the conversion. So that's the standard that's employed if the conversion was in the history of that property, either historically or in some instances, in a case called an instant application if it's part of the conversion.

In this instance there is no change in the number of units. There's 12 units there. So the question is, was there historically a conversion. The applicant asserts there is and has presented evidence to me that they believe documents a conversion.

As I noted to them, I must rely on the records of the District of Columbia Government as the key information and then other information certainly can be brought to my attention.

The piece of information that I've relied on in this case is a certificate of occupancy application from 1968 in which the application states -- the application that goes with that certificate of occupancy notes that the quote/unquote, the use prior to that construction for that building was a vacant lot. And then the application was for a 12 unit apartment building.

Based on that piece of information I concluded that that was then -- there was no conversion involved. It was a purpose built 12 unit apartment building in which the C of O was granted in 1968. I'm sure you'll hear from the applicant they have other information that I ultimately found was not persuasive.

CHAIRPERSON HEATH: Okay. Thank you. Sure, Mr. Cochran.

MR. COCHRAN: Thank you, Madam Chair. For the record, Steve Cochran, Office of Planning.

I wanted to add one more thing in some respects to further muddy the issue. The applicant has asked for relief under Section 330.7H. That's a new section adopted by the Zoning Commission and modifying the R-4 regulations. 330.7H says an apartment house in the R-4 district, converted from a nonresidential building prior to June 26th, 2015, shall be considered a conforming use, et cetera, et cetera, but shall not be permitted to expand either structurally or through

# Exhibit E

talking about should we even allow a variance? I guess that was the way I interpreted the question. Maybe I was --

MS. STEINGASSER: In this case everybody is right. We were trying to make the development of the nonresidential buildings easier. Right now they have an enormous burden and it comes from the fact that most of these large institutional or educational buildings aren't easily divided. The walls are thick and they don't move easily. And so there's kind of a -- the building tells you how many units are going to go there. And more times than not that eats up all the 900 square feet per land.

And so then you end up with these kind of gap tooths in the street wall or in the neighborhood. So we were trying to find a way to incentivize the redevelopment and adaptive reuse of these structures as an alternative to looking at the residential row houses.

So we thought, as we worked through it, we found that the trigger was the 900 square feet. And so rather than make that go through a variance, to try to do that by special exception. Was that clear as mud?