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March 7, 2016

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

Re: Application No. 19223 — 2233 10th Street NW (Square 357, Lot 90)
Prehearing Statement of the Applicant

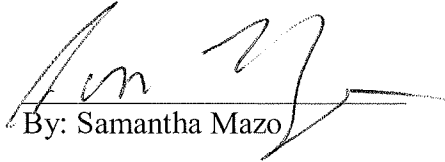
Chairperson Heath and Honorable Members of the Board:

On behalf of 5Design Development 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 22, 2016.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP


By: Samantha Mazo

Cc: Advisory Neighborhood Commission 1B
c/o James A. Taylor, Chair (via email)
Single Member District 1B11 Commissioner Robb Hudson (via email)
Maxine Brown-Roberts, Office of Planning (via email)

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

**APPLICATION OF
5DESIGN DEVELOPMENT, LLC**

**BZA APPLICATION NO. 19223
HEARING DATE: MARCH 22, 2016**

PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This Prehearing Statement is submitted on behalf of 5Design Development, LLC (the “Applicant”), the owner of property located at 2233 10th Street, NW (Square 357, Lot 90) (the “Property”), in support of its application for variance relief pursuant to 11 DCMR § 3103.2 from the requirements regarding nonconforming structures (§ 2001.3) and floor-to-area-ratio (“FAR”) (§ 402.4). The Applicant seeks to modernize the existing one-bedroom row dwelling located at the Property by adding a third story within the building’s existing footprint (the “Project”).

II. EXHIBITS IN SUPPORT OF THE APPLICATION

Tab A:	Proposed Rendering and Revised Plan (Option A)
Tab B:	Proposed Rendering and Revised Plan (Option B)
Tab C:	Photos of surrounding properties

III. UPDATED PLANS

In response to comments made by the Office of Planning (“OP”) and ANC 1B’s Zoning, Planning Development subcommittee, the Applicant has revised the third story façade to be constructed in brick. However, OP and the ANC disagree as to design. To that end, the Applicant prepared the “Option A” and “Option B” plans attached as **Tab “A”** and **Tab “B”**. Option A was prepared at the ANC’s suggestion and repeats the cornice line across the top of the

third story and includes embellishments around the top floor windows. Option A was presented to the full ANC on March 3, 2016, which voted to recommend approval of the Application.

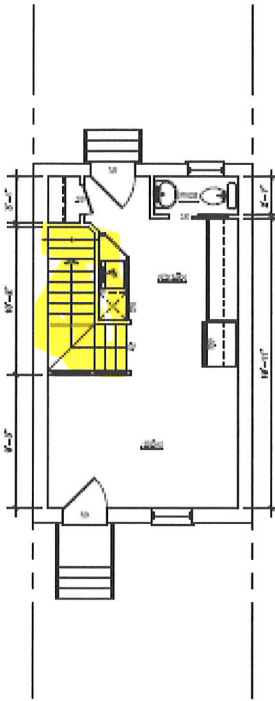
Following the March 3, 2016 ANC meeting, OP provided additional comments to the Applicant, indicating that it would prefer a design without the top-floor cornice line and the window embellishments. Accordingly, the Applicant prepared “Option B”, which is attached here at **Tab B** and has not been shown to the ANC.

The Applicant will construct either “Option A” or “Option B” as directed by the Board. Either option will be harmonious and compatible with the existing structure as well as several of the surrounding third story additions that have been approved and constructed in the Square. Photos of those developments are included at **Tab C**.

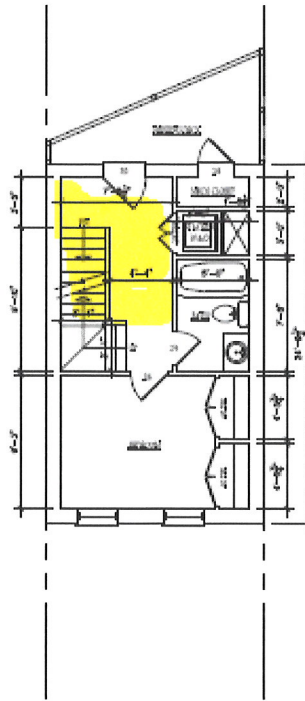
IV. DESCRIPTION OF THE PROPERTY AND THE PROJECT

As explained in the initial submission, the Property is zoned R-5-B and has an exceedingly small lot area of only 448 square feet. The Property is improved with a small one-bedroom single-family row dwelling (the “Row Dwelling”). The Row Dwelling has a gross floor area of approximately 742 square feet, with both the first and second floor being 371 square feet in size.

Below are images of the existing conditions plans:



1 EXISTING FIRST FLOOR



2 EXISTING SECOND FLOOR

The first floor opens from the street directly into the living area with a narrow kitchen in the rear. As highlighted in the above image, on the second floor, almost 27% of the floor area (approximately 99 square feet) is dedicated to the stairway/landing/hallway area (the “Stairway Core”). The rest of the second story has been divided into the Row Dwelling’s only full bathroom, the only bedroom, and the washer/dryer and mechanical closet areas, making for a cramped layout with no potential to upgrade or modernize as necessary within the existing structure. The Row Dwelling has no basement or cellar area and has an FAR of approximately 1.65. It has a deck that extends into the rear yard, which is currently nonconforming at approximately seven and a half feet. The Property is also nonconforming as to lot occupancy, with a lot occupancy of 82%. Above the maximum 60% permitted.

Due to the existing conditions, the Applicant cannot complete the necessary modernizations within the existing structure. The only feasible option is to add a modest, 371-square-foot third-story addition within the existing footprint. Doing so will enhance the livability and functionality of the Property, while retaining its use as a single-family dwelling. As shown on the architectural plans included at BZA Exhibit 10E, **Tab A** and **Tab B**, the Applicant has voluntarily restricted the height of the Project to approximately 34 feet, 10 inches — almost 15 feet lower than the maximum 50 feet permitted in the R-5-B District. Also, as shown in **Tab A** and **Tab B**, the Applicant proposes to construct the third story façade in brick at the request of OP and the ANC.

Importantly, to comply with the building code, 86 square feet (approximately 23%) of the third floor must be allocated to the Stairway Core. The rest of the third story will be divided into a modestly-sized bedroom, full bathroom, and office area, which will vastly increase the livability of the home. The Project will also add a third-story rear deck identical to the existing second-story deck.

V. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCES

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. The Property Is Unusual Because of Its Size, Shape, or Topography and Is Affected by an Exceptional Situation or Condition

The phrase “exceptional situation or condition” in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294

(D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

As discussed in the initial submission, the Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the Property is exceedingly small; (2) the Property is oddly shaped; (3) the Property is already improved with the Row Dwelling, which is nonconforming as to lot occupancy and rear yard; and (4) the Row Dwelling has a substantial Stairway Core area.

1. *Exceedingly Small Property*

As referenced above, the Property is exceedingly small – only 448 square feet in lot area. As such, the Property is one of the smallest lots in the Square.

2. *Odd Shape*

The Property is also oddly-shaped, contributing to its small size. The rear of the Property is trapezoidal: the bottom leg is approximately four feet, two inches longer than the top leg. This creates a substandard situation that further reduces the existing, nonconforming rear yard area.

3. *Existing Nonconforming Structure*

As noted above, the existing Row Dwelling has a lot occupancy of approximately 82%, above the 60% permitted in the R-5-B. Further, the existing rear yard is substandard, at about seven feet, five inches, whereas a minimum of 15 feet is required.

4. *Substantially-Sized Core Stairway/Hallway Area*

As explained above, the existing Stairway Core area connecting the first to the second floors takes up approximately 99 square feet (27%) of the second story floor area. Accordingly, it is not feasible to carve up the remaining second story square footage (272 square feet) into

functional additional spaces. Moreover, from a structural and building code perspective, the Stairway Core area must be extended to the third story, resulting in a minimum third story Stairway Core area of approximately 86 square feet. Accordingly, with the required core area, the maximum livable space on the third story is reduced to 285 square feet (371 sq. ft. – 86 sq. ft. = 285 sq. ft.).

B. Strict Application Would Result in a Practical Difficulty to the Owner

Due to the Property's exceptional conditions, strict application of the nonconforming structures and FAR requirements would result in practical difficulties for the Applicant.

1. Nonconforming Structure (§ 2001.3)

As stated above, the existing Row Dwelling is nonconforming as to lot occupancy and rear yard, and it would create a practical difficulty for the Applicant to demolish portions of the Row Dwelling to satisfy zoning standards. Indeed, the practical difficulties in this case result directly from the exceptional conditions discussed above. The small lot size, odd shape, and existing structure create the nonconformities that the Applicant must, due to no fault of its own, extend.

As stated above, the Applicant only seeks to add a third story within the existing footprint. The Applicant does not propose expanding the lot occupancy or rear yard nonconformance by constructing a rear addition. The only addition in this case is vertical. Therefore, because it would be unduly burdensome to have to remedy Row Dwelling's existing nonconformities, the Applicant will encounter significant practical difficulties if the requested variance is not approved.

2. FAR (§ 402.4)

Pursuant to 11 DCMR § 402.4, the Property is permitted a maximum FAR of 1.8. As stated above, the existing square footage on the first and second floors is maximized, and it is not feasible to upgrade the Row Dwelling within the existing first and second floors. Therefore, the only way to convert the existing one-bedroom, one full bathroom Row Dwelling into a modern functional

home is to add a complete third story within the existing footprint. As stated above, doing so will increase the total FAR to 2.48 (1,113 sq. ft. ÷ 448 sq. ft. of lot area).

This variance request is a direct result of the Property's exceedingly small lot area and the existing square footage of the Row Dwelling, which has an FAR of approximately 1.65. Based on the confluence of factors impacting the Property, too little square footage remains available for expansion within the Zone's FAR cap, as shown below:

Lot Area	Existing Row Dwelling	Existing FAR	Maximum sq. ft. at 1.8 FAR	Available sq. ft. under 1.8 FAR
448 sq. ft.	742 sq. ft.	1.65 (742 sq. ft. ÷ 448 sq. ft.)	806.4 sq. ft. (448 x 1.8)	64.4 sq. ft. (806.4 sq. ft. – 742 sq. ft.)

Based on the unique factors discussed above, an addition compliant with FAR requirements would be limited to 64.4 square feet. This is far too small to allow for a meaningful modernization of the Property, especially because at least 86 square feet of the third story will be allocated to the Stairway Core, as required by the building code. Therefore, more square footage is necessary to construct the third story's Stairway Core area than is available under the 1.8 FAR cap. For this reason alone, without the variance, the Applicant would not be able to modernize the Property as necessary to provide a functional living space, resulting in a practical difficulty to the Applicant.

Further, even assuming that the Applicant could demolish the interior of the Row Dwelling to reduce the Stairway Core requirements — which is not possible because narrower staircases would not satisfy the building code — a 64.4-square-foot addition would result in an absurdly-designed structure causing a practical difficulty to the Applicant. With such a small area, the most that could be constructed would be a partial third floor that would not achieve the goals of modernizing and making the Row Dwelling more functional. Instead, the opposite would occur, as the resulting structure would have non-compliant narrow staircases and an inefficient third level

that would not accommodate the floor layout necessary to bring this dwelling up to modern standards. Such a scenario would be unnecessarily burdensome to the Applicant.

The requested FAR relief necessary to construct a feasible third story that mirrors the floors below is a direct result of the Property's small lot area and the square footage of the existing Row Dwelling. Failure to approve the requested variance would cause a practical difficulty to the Applicant because, without such approval, the Row Dwelling cannot be modernized.

C. No Substantial Detriment to the Public Good and No Substantial Impairment to the Intent, Purpose, and Integrity of the Zone Plan.

The requested variances will not cause substantial detriment to the public good and or substantial impairment of the intent, purpose, or integrity of the Zone Plan. As noted above, the Applicant proposes to construct the third-story with a brick façade with a cornice line as shown in either "Option A" or "Option B". As designed, the addition would be harmonious and a complement to the neighboring structures. Further, the Project will have a height approximately 15 feet lower than the maximum permitted, and the addition will be within the existing footprint. As such, the Project will not have a substantial adverse effect on any abutting or adjacent dwelling in that it will not unduly affect the light and air available to those properties. Similarly, because numerous properties along 10th Street have third story additions, as shown at **Tab C**, the modest addition proposed here will not intrude upon the character of this street. Further, by continuing the Property's use as a single-family row dwelling, the Project will have no negative impact the Zone Plan.

VI. COMMUNITY OUTREACH

Since filing the application, the Applicant has met with Robb Hudson, the Single Member District 1B11, and has presented the Project to ANC 1B's Zoning, Preservation & Development ("ZPD") subcommittee. The ZPD Committee voted in support of the Project on February 8, 2016,

and requested for the third floor façade to be built in brick and that the Applicant repeat the cornice line across the third floor roof. In satisfaction of that request, the Applicant presented the “Option A” rendering attached here at **Tab A** at the March 3, 2016 ANC meeting. On that date, the full ANC voted to support the Project during its regularly scheduled, properly noticed public meeting. The ANC’s vote was in support of the Application as a whole, not specifically to approve the “Option A” rendering.

As stated above, following the ANC’s March 3, 2016 vote, OP informed the Applicant that it would prefer the “Option B” design attached here at **Tab B**. As stated above, that option was not presented to the ANC on March 3, 2016.

The Applicant is committed to move forward with either option as directed by the Board.

VII. WITNESSES

The following witnesses will appear on behalf of the Applicant:

1. Shaw Mostashari, Managing Member of 5Design Development,
Applicant
2. Any other witnesses necessary.

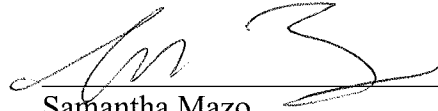
VIII. CONCLUSION

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 22, 2016.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

A handwritten signature in black ink, appearing to read 'S. Mazo', written over a horizontal line.

Samantha Mazo
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