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July 5, 2016

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

Re: Application No. 19310-622-624 North Carolina Avenue SE (Square 871, Lot 42)
Prehearing Statement of the Applicant

Chairperson Heath and Honorable Members of the Board:

On behalf of Kenneth A. Golding, 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 July 19, 2016.

Thank you for your attention to this matter.

Sincerely,
GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP



By: Meredith H. Moldenhauer

Cc: Advisory Neighborhood Commission 6D
c/o Kirsten Oldenburg, Chair (via email)
Diane Hoskins, SMD 6B02
Brandice Elliot, Office of Planning (via email)

Board of Zoning Adjustment
District of Columbia
CASE NO.19310
EXHIBIT NO. 34

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

**APPLICATION OF
KENNETH A. GOLDING**

**BZA APPLICATION NO. 19310
HEARING DATE: JULY 19, 2016**

PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This Prehearing Statement is submitted on behalf of the Kenneth A. Golding (the “Applicant”), the owner of property located at 622-624 North Carolina Ave, S.E., Lot 42 in Square 871 (the “Property”) in support of his application for special exception relief from the requirements regarding (i) an expansion to an existing apartment house (§ 336.13) and (ii) the penthouse setback requirements (§ 411.11) along with variance relief from the requirements regarding lot occupancy (§ 403.2) and for an addition to a nonconforming structure (§ 2001.3) to permit the expansion and modernization of an existing apartment house in the R-4 District.

II. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A: Updated Architectural Plans
Exhibit B: Letters of Support

III. UPDATED ARCHITECTURAL PLANS

The Applicant, in response to comments and input received during agency meetings made substantial revisions to the plans. See, Updated Architectural Plans (“Revised Plans”) at **Exhibit A**. As shown on the Revised Plans, notable revisions include the elimination of elevator access to the rooftop and the relocation of the rooftop access. The revisions resulted in the elimination of the variance request for penthouse height relief, as fully described below.

The Property is improved with a residential structure that likely predates 1878¹, and has endured several renovations of the past 138 years. The existing structure is in need of renovation and modifications to the current awkward dormitory-style layout that is ill suited for families or those with mobility challenges. The Applicant proposes to expand and modernize the structure, which includes adding an elevator to the Property to ensure that those that wish to age in place or are mobility challenged can also reside at the Property. The Applicant initially planned to provide elevator access to the rooftop in order to enable all possible occupants of the third unit the ability to access the private roof deck. This necessitated the request for penthouse height relief, as the elevator overrun extended the penthouse height to 15 feet. As the Revised Plans show, the Applicant, pursuant to agency comments, has revised the plans to provide elevator access to the units only. Now the elevator has a mechanical penthouse (“Elevator Penthouse”) of 2’-3”², several feet below the 12 foot maximum. *See*, Sheet A2.5 of **Exhibit A**. Though the penthouse no longer needs a variance for penthouse height relief, it still needs special exception relief from the penthouse setback requirements.

Given the importance of providing access to useable outdoor space, the Applicant proposes to provide stair access to the rooftop (“Stair Penthouse”). However, pursuant to comments from the Historic Preservation Office, the Applicant has set the Stair Penthouse as far back as practicably possible from the front building wall. The Stair Penthouse, which varies in height due to the sloping roof, does not exceed 9’-1” in height and does not need height relief. Importantly, as the revised plans show at Sheet S1.5 of **Exhibit A**, the new Stair Penthouse is not visible from North Carolina Ave SE. Similar to the Elevator Penthouse, the Stair Penthouse needs special exception relief from the penthouse setback as it abuts a portion of the western wall.

¹ Pursuant to a site visit and building permit search, staff with the District Historic Preservation Office indicated to the Applicant that the structure likely predates 1878.

² As the roof plan shows, the penthouse for the elevator overrun and the penthouse for the stairwell are in separate enclosures. Pursuant to 11 DCMR § 411.3, a penthouse that is less than four feet in height above a roof or parapet wall is only subject to the penthouse setback requirements of 11 DCMR § 411.18, not the other penthouse requirements.

11 DCMR § 411.3: “Except for compliance with the setback required by § 411.18 and as otherwise noted in this section, a penthouse that is less than four feet (4 ft.) in height above a roof or parapet wall shall not be subject to the requirements of this section.”

The totality of the revisions results in a roofline and corresponding line-of-sight that is respectful of its location in the Capitol Hill Historic District but that still provides access to useable outdoor space.

IV. DESCRIPTION OF PROPERTY AND THE PROJECT

The Property is an irregularly shaped through lot located in the Capital Hill neighborhood and is within the Capital Hill Historic District. The Property is located in a diverse square; it contains a mix of rowhomes, semi-detached dwellings, flats, and apartment houses, several private garages with street frontage, and an automobile repair and service center. Importantly, the Property is centrally located to community facilities, and is across the street from the Rumsey Aquatic Center, Eastern Market, and Triangle Park. The Eastern Market metro station is only 0.3 miles away.

The Property is improved with an existing three-unit apartment house that was converted from a residential building prior to 1981. See, Certificates of Occupancy at **BZA Exhibit 10C**. The previous owner of the Property was Appalachian State University, which used the Property as a residential hall. Therefore, even though the Property has a Certificate of Occupancy for a three-unit apartment house, the interior layout is disjointed, incoherent, and reflects the use of the Property as a dormitory-style residential facility. The Applicant proposes to improve the existing structure and create three, thoughtfully and efficiently designed units. The Applicant proposes to expand the existing partial third floor, expand the western wall, and even out the rear wall. The proposed renovations will dramatically improve the flow on each floor and permit each of the units to accommodate at least three bedrooms. Unlike many new developments, these units will be generously sized; “Unit One” will be 1,343 square feet, “Unit Two” will be 1,209 square feet, and “Unit Three”, a two-story unit, will be 2,578 square feet. The overarching goal of this development is to provide a dwelling that permits families and individuals to age in place on the hill. As noted in the letter of support from Capitol Hill Village, there is a “growing need to address housing and other needs of seniors” that seek to remain on Capitol Hill, near friends and

their favorite activities as they age. Therefore, as noted above, the Applicant also proposes to add an elevator to the Property, which will provide mobility challenged access to units one and three.

V. APPLICANT MEETS BURDEN OF PROOF FOR SPECIAL EXCEPTION

The Board is authorized to grant a special exception where it finds:

- (1) the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Zone Maps; and
- (2) the proposed use is not likely to adversely affect the use of neighboring property, subject to the specific conditions specified in the Zoning Regulations for the particular special exception use. 11 DCMR § 3104.1.

Unlike an area variance, relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981 (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973))). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.* As described in the Initial Submission, supplemented in this Prehearing Statement, and as will be further explained at the public hearing, all the conditions for a conversion of a residential building to an apartment house are satisfied.

A. The Proposed Addition Complies with § 336.13

Pursuant to 11 DCMR § 336.13³, the Board is authorized to grant a special exception to permit the expansion of an existing apartment house that was converted from a residential building prior to

³ 11 DCMR §336.13 states: An apartment house in an R-4 Zone District, converted from a residential building prior to June 26, 2015, or converted pursuant to §§ 3202.8, 3202.9, or 3202.10, shall be considered a conforming use and structure, but shall not be permitted to expand either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment ***pursuant to §§ 3104.1 and 3104.3 and this subsection.*** (Emphasis added.) The existing apartment house was converted from a residential building prior to June 26, 2015, and is thus considered conforming with respect to use and structure. The Applicant does not seek to increase the number of units. However, the proposed structural addition requires the Board’s approval pursuant to a special exception as specifically noted in the subsection, 11 DCMR § 336.13.

June 26, 2015, where it finds that the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to adversely affect the use of neighboring property. The proposed structural expansion of the Property complies with special exception requirements as discussed below.

1. Harmony with the General Purpose and Intent of the Zoning Regulations and Maps

The proposed additions to the Property are in harmony with the general purpose and intent of the Zoning Regulations and Maps. The Applicant proposes to make improvements to an existing structure that will dramatically improve its design and efficiency. Currently, the existing structure has a disjointed and inefficient design. The proposed additions will improve the efficiency of the structure, and will allow each of the units to accommodate at least three-bedrooms, a feature that is highly desired for families, and highly desired among senior citizens that need in home assistance, all without changing the use the Property has had for over 30 years. The proposed additions furthers several specific goals of the Comprehensive Plan, which repeatedly notes the need for housing units with three or more bedrooms and housing accommodations for seniors seeking to age in place. *See*, 10A DCMR §§ 500.19, 505.4, 505.6 516.2 and 516.10.

2. No Adverse Effect on the Use of Neighboring Property

The proposed project will have no adverse effect on the use of neighboring property. The Property is located in a triangular square with a variety of uses. The Property is adjacent to two rowhomes and abuts an auto repair garage in the rear. The proposed additions will not impact the use of any of the neighboring properties. The Property has been a three-unit apartment house for over 30 years. The proposed additions will not change the use of the Property, as it will continue to be a three-unit apartment house.

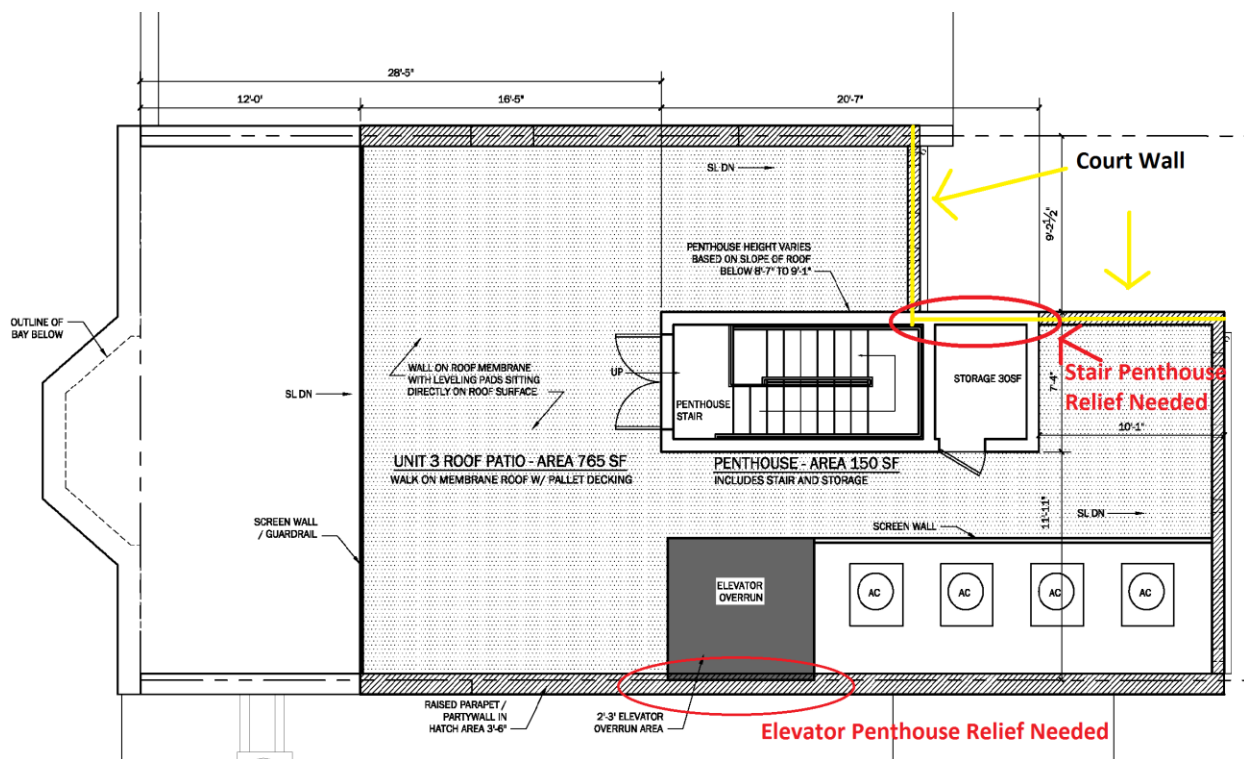
B. Penthouse Setbacks-Compliance with the requirements of § 411 would be impracticable

Under § 411.11 the Board may grant a special exception from the roof structure requirements where it finds that compliance with the regulations would be “impracticable because of operating

difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, . . . provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.” 11 DCMR § 411.11.

1. Full compliance with the penthouse setbacks would impracticable and unreasonable

The Applicant seeks to modernize and improve the existing apartment, which includes adding an elevator to the structure. Pursuant to the Revised Plans, the Applicant proposes to provide elevator access to Units 1 and 3, and stair access to the rooftop. Thus, the Revised Plans propose a 2’-3” Elevator Penthouse that abuts the eastern building wall and an approximately 9’ Stair Penthouse that abuts a portion of the western building wall along the court (the, “Court Wall”).



Due to the constraints of the existing structure, full compliance with the setback requirements of 11 DCMR § 411.18 would result in structural inefficiencies. The existing structure is improved with a core along the eastern building wall. Pursuant to Historic Preservation requirements, the Applicant is

keeping the existing floor joist. Relocating the opening in the floor in order to shift the core and elevator would be impracticable and unreasonable.

The Elevator Penthouse, which is only 2'-3", is setback 28'-5" from the front building wall, and setback over 20' from the rear and western building wall; the Elevator Penthouse abuts the eastern building wall. To set the Elevator Penthouse 2'-3" from the eastern wall would necessitate the shifting of the building's core away from the eastern wall by 2'-3". Such a shift would create an awkward gap in the layout design, would reduce the usable space on each floor plate and decrease the efficiency of design.

The Stair Penthouse, which is approximately 9'-1", is setback 28'-5" from the front building wall, 10'-1" from the rear building wall, 9'-2 1/2" from the western building wall and 11'-11" from the eastern building wall; the Stair Penthouse abuts a portion of the Court Wall. The shape and width of the existing structure, particularly the presence of the nonconforming open court, make full compliance with the setback requirement for the Stair Penthouse impracticable. The Stair Penthouse is located as far as possible for each building wall, except the Court Wall. To comply with the setback requirements, the Applicant would need to reduce the height of the Stair Penthouse to a point that would negate its purpose of providing building code compliant access to the rooftop. Moreover, to set the Stair Penthouse 9'-1" from the Court Wall would necessitate setback relief from the eastern building wall and would bring the Stair Penthouse in closer proximity to the adjacent building.

2. The intent and purpose of the penthouse regulations will not be materially impaired

The proposed Elevator Penthouse and Stair Penthouse comply with the intent and purpose of the penthouse regulations. The Elevator Penthouse is 2'-3" in height; lower than the proposed parapet party wall. The Elevator Penthouse will not be visible from any street frontage. Likewise, the Stair Penthouse, will not be visible from North Carolina Avenue SE. More importantly, though the Stair Penthouse requires setback relief, in practicality, it is setback a distance greater than its height from the front, east, rear and main portion of the west-building wall. The Stair Penthouse only abuts a portion of the Court Wall, and is thus setback over 9 feet from the party wall to the west. See, Proposed Roof Plan Sheet A2.5

of **Exhibit A**. Thus, though not in full technical compliance, the proposed Elevator Penthouse and Stair Penthouse fully comply with the intent and purpose of the penthouse regulations.

3. The light and air of adjacent buildings will not be affected adversely

The proposed penthouses will not have an adverse affect on the light and air available to adjacent properties. The Property is adjacent to row structures, neither of which have solar panels nor roof top elements. Furthermore, the Elevator Penthouse has a height lower than the proposed parapet wall and the Stair Penthouse is substantially setback from the adjacent row structures. The proposed penthouses will have no impact on the light and air available to their homes.

4. Harmony with the General Purpose and Intent of the Zoning Regulations and Zone Maps

As noted by the Capitol Hill Village “flights of stairs and never-ending maintenance take a toll.” The proposed elevator and corresponding Elevator Penthouse modernizes the existing structure and ensures that those with mobility challenges are capable of residing at the Property. The Stair Penthouse provides access to usable outdoor space. The addition of the penthouses does not alter the use of the Property, and thus it will remain consistent with purpose and intent of the Zoning Regulations and Map.

5. No Adverse Effect on the Use of Neighboring Property

The proposed penthouses will have no adverse effect on the use of neighboring properties. The Property has been and will continue to be a three-unit apartment house. The proposed penthouses do not change the use of the Property. Moreover, the proposed penthouses do not impact either adjacent property owner from increasing the height of their property to the maximum permitted in the R-4 Zoning District- 35 feet. Lastly, the penthouses as redesigned will not be visible from North Carolina Avenue SE. Consequently, the proposed penthouses will have no adverse effect on the use of neighboring properties.

VI. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

Variance relief is required from the lot occupancy requirements (§ 403.2) and to permit an addition to a nonconforming structures (§ 2001.3). Under D.C. Code §6-641.07(g) (3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) The owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also*, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need to demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972) (noting, “area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met in this Application.

A. The Property 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).

The Property is unusual and affected by an exceptional situation due to the confluence of the following factors: 1) the Property has angular rear lot lines; 2) the Property is improved with a structure that creates a nonconforming open court; and 3) the Property is located in a historic district.

1. Shape of the Lot and angular rear lot lines

The Property is an oddly shaped through lot with 28.46 feet on street frontage on North Carolina Avenue and only 6.46 feet of street frontage on Independence Avenue. The through lot condition is created by a slender, approximately 65 feet long, 6.46 feet wide dog leg that juts out at an angle extending the rear of the Property. The dog leg combines with the angular shape of the rear of the Property to form exceptionally shaped rear lot lines.

2. Existing nonconforming open court

The Property is improved with a residential structure that predates the Zoning Regulations by several decades. The Property has contained an open court since at least 1903.

3. Existing structure in a historic district

The Property is located in the Capital Hill Historic District. The Applicant cannot demolish the existing structure and must work within its existing framework.

B. Strict Application of Zoning Regulations Would Result in Practical Difficulty to the Owner

Strict application of the Zoning Regulations with respect to lot occupancy (§ 401.3) and the nonconforming structure requirement (§ 2000.3) would prevent any substantive improvements to the existing structure and would result in a practical difficulty to the Applicant.

1. Lot Occupancy (§ 401.3)

The maximum permitted lot occupancy for a converted residential building in the R-4 is 60%; the proposed structure has a lot occupancy of 65%. Pursuant to comments from the Historic Preservation

Office, the Applicant eliminated elevator access to the rooftop and located the Stair Penthouse over 28' from the front building wall. In the Stair Penthouse's current location, the Applicant must add a secondary form of egress to Unit 3 in order to comply with the 125 feet egress route building code requirement. Consequently, the Applicant has added a balcony and open exterior stairs⁴ leading from Unit 3 to the rear of the Property; the addition of the balcony and stairs increased the lot occupancy to a point that necessitates variance relief.

As a contributing building in the Historic District, the Applicant cannot demolish the structure and build a new building from the ground up. Consequently, he must improve the efficiency of the building and fully comply with the building code in the existing framework. The addition of the secondary egress is necessary to meet building code requirements. Without the lot occupancy relief, the Applicant would face a practical difficulty in modernizing the existing structure and providing access to useable outdoor space while complying with current building code requirements.

2. Nonconforming Open Court (§ 2001.3)

The existing structure at the Property has a nonconforming open court (8.5 feet wide instead of 11 feet wide). Without variance relief the existing structure cannot be expanded or improved. The proposed addition to the Property will reduce the overall area of the open court, but the extension of the third floor will increase the degree of nonconformity vertically. The only way the Applicant could comply with the current open court regulations would be to 1) demolish portions of the existing historic structure, which would require relief from the Mayor's Agent, or 2) extinguish the nonconforming court by filling it in which would result in an increase in the lot occupancy relief needed since the current open court does not contribute the Property's lot occupancy. Both "solutions" would be unduly burdensome for the Applicant.

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

⁴ A portion of the exterior stairs leading to Unit 3 are located in the nonconforming court. The Applicant has received confirmation from the Zoning Administrator that since the stairs are uncovered and open to the sky they are permitted to occupy the court.

The requested variances can be granted to allow the proposed modest expansion of the existing apartment house without causing substantial detriment to the public good and without substantial impairment to the intent, purpose, or integrity of the Zone Plan. The Applicant seeks to modernize the Property in order to create units that can accommodate a variety of residents (i.e. families, senior citizens, handicap individuals). As noted above, the proposed additions will permit each unit to accommodate at least three-bedrooms, and will allow two of the units to be mobility challenged accessible. The Project directly furthers several provisions of the Comprehensive Plan which recognizes the need for housing units with three or more bedrooms, units for those with disabilities, and housing accommodations for seniors. *See*, 10A DCMR §§ 500.19, 505.4, 505.6 and 516.10. In particular, 10A DCMR § 516.2 states when discussing housing for seniors that efforts must “be accompanied by a need for new programs, ranging from those that help seniors “age in place” through *home retrofits*.” (Emphasis added). Given that the Property is ideally located in close proximity to the metro and many community services, it furthers the intent and goals of the Zone Plan by enabling an existing apartment house that is located in a transient- friendly neighborhood with several amenities to be improved so that it can accommodate a more diverse segment of the community, particularly families, those with mobility challenges, and those seeking to age-in-place.

VII. COMMUNITY OUTREACH

Since the filing of the initial application, the Applicant has conducted significant community outreach. The Applicant has spoken with his neighbors and obtained seven letters of support. The Applicant presented to the Capital Hill Restoration Society Zoning Committee on June 9th. The Applicant will present to the ANC 6B Zoning and Planning Committee on July 5th and the full ANC on July 12th. The Applicant respectfully requests to supplement this filing with the ANC’s decision following the full ANC meeting.

VII. WITNESSES

The following witnesses will appear on behalf of the Applicant:

1. Kenneth Golding, Applicant
2. Eric Blodnikar, Rad Designs

IX. CONCLUSION

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings in this case, we hereby submit that the application meets the requirements for special exception and variance relief.

We look forward to presenting our case to the Board on July 19, 2015.

Respectfully submitted,

GRIFFIN, MURPHY,
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LLP



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