

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

Revised Application of
Nezahat and Paul Harrison

BZA Application No: 20594
ANC: 3F03

STATEMENT OF THE APPLICANT (REVISED)

This is a revised application by homeowners Nezahat and Paul Harrison (the “**Applicant**”) for Special Exception Approval of theoretical subdivision under Subtitle C, § 305, or in the alternative an area variance from Subtitle D, § 502 as applied to Subtitle C, § 303 for the minimum lot width required for record lot subdivision. The Applicant previously applied for a variance from the minimum lot width and front setback requirements but based on feedback from the community and the Office of Planning (“**OP**”), the Applicant is revising their request for relief.

The requested action is made in connection with the redevelopment of the property located at Square 2041, Lot 818 (the “**Property**”), also known as 3007 Albemarle Street NW. The Property is bounded by Albemarle Street NW to the south, and on the north by Appleton Street NW as it curves and becomes 31st Street NW. It sits in the square between 30th and 32nd Streets NW to the east and west. The Property is in the R-8 Zone District, which is the Forest Hills Tree and Slope Overlay District.

The Property is not in a historic district, is not subject to Commission on Fine Arts review, and is not included in the list of squares subject to additional tree restrictions under 11-D DCMR § 509 of Forest Hills Tree and Slope Zone Rule. A portion of the District of Columbia Zoning Map depicting the Property is at IZIS Exhibit 12, and a Surveyor’s plat is at IZIS Exhibit 2. Applicant’s Statement of Public Outreach is at IZIS Exhibit 13.

I.

Nature of Relief Sought

The Applicant requests that the Board of Zoning Adjustment (“BZA” or “Board”) approve the following relief. In order to build no more than two (2) single family homes on a 30,618 sq ft lot in a zone with 7,500 sq ft lot area minimum,

1. A Special Exception for Theoretical Subdivision under Subtitle C, § 305; or
2. In the alternative, an area variance from Subtitle D, § 502 as applied to Subtitle C, § 303 for the minimum lot width required for record lot subdivision.

The Project will conform to the Zoning Regulations in all other ways.

II.

Jurisdiction of the Board

The Board has jurisdiction to grant the relief requested pursuant to Subtitle X, §§ 900.2 and 1000.1 of the Zoning Regulations.

III.

Information Regarding the Property and Project

A. Description of the Property and Surrounding Area

The Property is in Forest Hills in Ward 3, addressed and fronting on Albemarle Street NW to the south via vehicular and pedestrian access through a pipestem driveway that has been in place since 1924. To the north the Property has over 75 feet of frontage on Appleton Street NW as that street travels east and transitions north onto 31st Street NW. The Property was originally developed before the relevant sections of Appleton and 31st Streets were platted and built in 1953 so that the adjacent properties could be subdivided and homes built. See IZIS Exhibit 71 showing street dedication deed and dates of subsequent subdivisions for home construction. While Appleton Street was constructed adjacent to the subject property, no vehicular or pedestrian access to the Property was built. For that reason, the Property has accessed Albemarle Street NW exclusively via pipestem driveway for approximately a century. The pipestem is subject to right of way easements from the adjoining properties at 3009 and 3005 Albemarle Street, which have been used for garage and side-door pedestrian access since rights of way were recorded in 1924.

The Property measures approximately 30,618 square feet of land area and is improved with a small two-story plus unfinished basement and semi-finished attic residential building (the “**Existing Building**”). A photographic exposition of the Property is at IZIS Exhibit 3. Larger single family residential buildings occupy the remainder of the square. All properties across the streets from Square 2041 are single family residential, except for the rear of the Avalon apartment building across 32nd Street to the west which in turn fronts onto Connecticut Avenue. While the Square exemplifies the Forest Hills zone focus on single family homes on large, forested lots, it effectively serves as the transition to the high-density Van Ness mixed use district as the adjacent square to the west is occupied by the aforementioned large apartment complex. Van Ness’ Connecticut Avenue retail district, the Van Ness-UDC Metro Station, the University of the District of Columbia’s main campus, as well as the CVS and

the Giant grocery are between 1,000 and 2,000 foot (0.2-0.4 miles) walks toward the south from the Property, while a northern walk on Connecticut Avenue passes many blocks of large multi-story apartment complexes.

The Property has a significant grade change between Albemarle and Appleton Streets, starting at its lowest at the Albemarle Street lot line and reaching maximum elevation at the Appleton Street lot line (the public space then descends to the Appleton Street curb). The Property is located in the Forest Hills Tree and Slope Zone, but it is not subject to the additional tree restrictions or additional minimum lot size restrictions set out in 11-D DCMR § 509.1. The lots and homes across Albemarle Street NW to the south are adjacent to Rock Creek Park's Soapstone Valley, but the Property is not subject to Commission on Fine Arts review.

The Property has received Design Concept approval for a curb cut onto Appleton Street from the Public Space Committee, with issuance of the permit contingent on the BZA granting subdivision.

B. Description of the Project

Applicant proposes to remove the current improvements and then construct two single family homes (together the "**Project**").¹ Proposed plans are at IZIS Exhibit 75. As part of the Project, the Applicant proposes to divide the Property into two lots, Lot One and Lot Two. A proposed plat is at IZIS Exhibit 11, with Lot One indicated as 818A and Lot Two indicated as 818B.

On Lot One, House One is intended to be occupied as the family home for the Applicant's five-person three-generation household. It will be located on the site of the current house and have its access to Appleton Street via the aforementioned new curb cut. Lot One would retain 18,404 square feet of the current 30,816 square foot lot. This lot will be well in excess of the minimum lot size of 7,500 in this zone. The proposed three-story home is designed as a multi-generational home with sufficient home

¹ Deconstruction is proposed to be managed by local 501(c)3 Community Forklift or a similar organization. See, <https://communityforklift.org/donate2/deconstruction/>.

office space for the working adults as well as a below-grade garage entered from the west side to cover all parking needs off-street. The proposed curb cut is in a zone currently regulated for no parking and approximately 20 feet from the nearest legal parking space; there will be no impact on available street parking nor does it impact street sight lines.

On Lot Two, the second home (“**House Two**”) would retain the Albemarle Street access and address and be offered for public sale. It would be built on the remaining 12,214 square feet of the currently unimproved eastern third of the Property, again well in excess of the minimum 7,500 square foot lot size. House Two is designed as “comfortable modern” yet contextual, complementing House One’s siting on the top of the hill as well as the surrounding homes by nestling into the existing low-point of the property. House Two is also designed with three stories and a garage below grade. In addition to reducing the total amount of driveway on the Property by over half, the remaining driveway will be reconstructed as an engineered permeable surface and include other stormwater retention infrastructure to substantially improve current runoff problems caused by drainage flowing through from the neighboring properties to the north and west. Lot and House Two will be attractively landscaped for the benefit of House One, the adjacent properties and the neighborhood. Sufficient parking for residents, guests and deliveries will be provided via the garage and front courtyard so there should be no impact on street parking or street throughput.

Both homes comply with R8 height limits. Project lot coverage will be less than 12.8% of the original lot size, with House 1 covering 11.5% of Lot One’s 18,404 square feet, and House 2 covering 14.7% of Lot Two’s 12,214 square feet. It will have less than 38% nonpermeable surface and Applicants are endeavoring to convert patio and deck areas into permeable in order to reduce coverage to significantly.

The Project will meet all setback and yard requirements other than the relief requested here.

IV.

The Application Meets the Requirements for a Special Exception for Theoretical Subdivision

Applicants respectfully submit that the Project meets the standards for Theoretical Subdivision. Theoretical Subdivision allows construction of “multiple primary buildings on a single record lot” in an R zone when Special Exception criteria are met. Subtitle C §305.1. “The number of buildings permitted by this section shall not be limited; provided, satisfactory evidence is submitted that all the requirements of this section are met based on a plan of theoretical subdivision where individual theoretical lots serve as boundaries for assessment of compliance with the Zoning Regulations.” Subtitle C §305.2.

A. The Special Exception Requirements

Subtitle X, Section 901.2 directs that in general to obtain special exception approval the applicant must show that the requested approval will be in harmony with the intent and purpose of the Zoning Regulations and Zoning Maps and will not adversely affect neighboring properties. In reviewing applications for a special exception under the Zoning Regulations, the Board’s discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., Nat’l Cathedral Neighborhood Ass’n. v. D.C. Board of Zoning Adjustment, 753 A.2d 984, 986 (D.C. 2000).

Subtitle C §305 requires that for a Special Exception to be granted “[t]he following development standards shall apply to theoretical lots:

- (a) Side and rear yards of a theoretical lot shall be consistent with the requirements of the zone;
- (b) Each means of vehicular ingress and egress to any principal building shall be at least twenty-four feet (24 ft.) in width, exclusive of driveways;
- (c) The height of a building governed by the provisions of this section shall be measured from the finished grade at the middle of the building façade facing the nearest street lot line; and

(d) The rule of height measurement in Subtitle C § 305.3(c) shall supersede any other rules of height measurement that apply to a zone, but shall not be followed if it conflicts with the Height Act.

Subtitle C §305 continues that before taking final action on an application under this section, the Board of Zoning Adjustment shall refer the application to the Office of Planning for coordination, review, and report, including:

(a) The relationship of the proposed development to the overall purpose and intent of the Zoning Regulations, and other planning considerations for the area and the District of Columbia as a whole, including the plans, programs, and policies of other departments and agencies of the District government; provided, that the planning considerations that are addressed shall include, but not be limited to:

- (1) Public safety relating to police and fire concerns including emergency vehicle access;
- (2) The environment relating to water supply, water pollution, soil erosion, and solid waste management;
- (3) Public education;
- (4) Recreation;
- (5) Parking, loading, and traffic;
- (6) Urban design; and
- (7) As appropriate, historic preservation and visual impacts on adjacent parkland;

(b) Considerations of site planning; the size, location, and bearing capacity of driveways; deliveries to be made to the site; side and rear setbacks; density and open space; and the location, design, and screening of structures;

(c) Considerations of traffic to be generated and parking spaces to be provided, and their impacts;

(d) The impact of the proposed development on neighboring properties; and

(e) The findings, considerations, and recommendations of other District government agencies.

Finally, Subtitle C, Section 305.6 reiterates the Subtitle X, Section 901.2's overall Special Exception requirements by stating that "the proposed development shall comply with the substantive intent and purpose of this title and shall not be likely to have an adverse effect on the present character and future development of the neighborhood."

B. The Project Meets or Exceeds the Intent and Purpose of the Code

The Project as designed is in harmony with and contributes to the intent and purpose of the zoning regulations and maps without adversely affecting the neighboring properties. The R8 zone emphasizes preserving Forest Hills' park-like setting by regulating alteration or disturbance of terrain, destruction of trees, and the ground coverage of permitted buildings and other impervious surfaces. Preventing adverse impact on adjacent open space, parkland and other environmental assets while limiting ground coverage so to encourage compatibility with the existing neighborhood is highlighted. These priorities are executed through the most restrictive zoning standards in the city, requiring: a) detached houses with no more than 30% lot coverage and at least 50% pervious surface on 7,500-9,500 square foot lots, b) 25-foot rear yards; c) a total of 24-foot side yards with neither side less than 8 feet, and d) a 40-foot height limit. DOEE stormwater and DDOT urban forestry regulations flesh out the remainder of the regulatory framework that applies to the zone and the subject property. Committee on Fine Arts review of park-adjacent properties does not apply here because the property is not park-adjacent. Similarly, the additional Forest Hills Tree and Slope District lot size and tree regulations do not apply as this is not in one of Forest Hills' park-adjacent squares.

The proposed project is more in alignment with the established regulatory regime than an as-of-right development. As mentioned previously, the Project as proposed will use less than 13% of the available 30,618 square feet and thus is significantly less dense than the 30% lot coverage the zoning

allows on the Property overall. Additionally, on the individual lots, House One would occupy 11.5% of Lot One and House Two would occupy 14.7% of Lot Two. The project meets or exceeds all setbacks. The proposed plans have no more than 38% nonpermeable surface, again compared to the 50% allowed. Both proposed homes will be below 40 feet in height. In addition, while DDOT Urban Forestry regulates specific tree removals, the project includes a net increase of tree number, circumference, diversity, boundary screening, and forest health. See landscaping plan, available at IZIS Exhibit 72. The project will maintain and highlight the site topography and elevations. Finally, the project not only meets DOEE stormwater management requirements it will contribute to a net decrease in first flush and overall stormwater runoff by exceeding those requirements by at least 185%. See Civil Diagram, available at IZIS Exhibit 73.

The only substantive question is therefore whether the site can host two moderately large single-family homes, each on a lot significantly larger than what is required. This comparison should be made against one as-of-right larger home (or other uses allowed as-of-right or through special exception in the zone, including religious or private educational use) on a lot more than twice as large as any other in the square.

C. The Project Meets or Exceeds the Enumerated Considerations

a. Side and rear yards²

The R-8 Zone requires 24 feet of side yard, with no single side yard having a width of less than 8 feet. Subtitle C, § 507. The project meets or exceeds this standard, as the eastern side yard between House Two and the properties that front on 30th Street will be no narrower than 12 feet while the side yard between House Two and the House One property line will be an additional 12 feet for a total of 24 feet.

² Although front setbacks are not an enumerated consideration under theoretical subdivision, the portion of the proposed House 1 opposite the Appleton Street lot line is 17.25 feet from the street lot line and thus within the range of blockface that would apply to by-right plans (17.25 to 19.9 feet). Applicants have adjusted their plans for this home back three feet from where it was and adjusted the overall depth, thus eliminating the prior setback variance request.

While again it is not required, the proposed House 2 fits fully within the range of blockface established by its Albemarle Street neighbors (22.0 feet established by 3011 Albemarle St to 217 feet established by 3045 Albemarle Street).

The western setback between House One and 3045 Albemarle Street is 42 feet, while the setback between House One and the House Two property line is 39.8 feet for an overall House One side yard of 81.8 feet. See Revised Site Plan, available at IZIS Exhibit 75.

While the Property is a through lot, a theoretical subdivision in the R-8 Zone requires 25-foot rear yards. Subtitle C, § 507. House One clearly meets this as it will be 67.9 feet from its southern neighbors at 3015 and 3017 Albemarle Street. As for House Two, it meets the standard regardless of whether it is measured from the north or south because it will be 42 feet from its north property line at 4525 31st Street, and 42.6 feet from its southern property line adjacent to 3009 and 3011 Albemarle Street.

b. Vehicular ingress and egress exclusive of driveways

Each proposed house will connect directly with a 30-foot-wide street via a private driveway. See site plan, available at IZIS Exhibit 73. House Two will be served by the existing 16.3 foot-wide private driveway to Albemarle Street and at the same level of use intensity as has existed since 1924 – one single-family house with fee ownership of the driveway, and two right-of-way easements used by two adjacent single-family homes for garage access. House One will be served by a 12-foot private driveway accessing Appleton Street via a new curb cut into an existing no-parking zone.

On October 28, 2021, the Public Space Committee (“PSC”) unanimously granted Design Concept Approval for the proposed Appleton Street curb cut (Public Space Permit Application #372705). The PSC’s approval was conditioned on BZA approval for subdivision.

D. Height Measured from the Finished Grade at the Middle of the Building Façade Facing the Nearest Street Lot Line, Superseding any Other Rules of Height Measurement and not in Conflict with the Height Act

Both proposed homes are less than 40 feet high as measured from the finished grade at the middle of the building façade. No other height measurement rules apply, and the project does not conflict with the Height Act.

E. The Project Addresses the Additional Enumerated Planning Considerations

Applicants have provided the updated site plan, floor plans, and elevations required by Subtitle C §305.4. See IZIS Exhibits 73 and 75. In addition to the discussion above, the project meets the other planning considerations enumerated in Section 305.5.

a. Public safety relating to police and fire concerns including emergency vehicle access

Both homes are required by code to be sprinklered and are within 400 feet from the nearest fire hydrant. Police and fire access to House Two will be provided via the same pipestem driveway as the current unsprinklered house is today. Assistant Fire Marshal Spencer A. Hamm has confirmed that the Fire Department has no concern about the proposed plan. See IZIS Exhibit 8. Applicant is unaware of any policing issues.

b. The environment relating to water supply, water pollution, soil erosion, and solid waste management

The project will access public water and sewer through existing or new connections. As to stormwater, the site is in a Separate Sewer System zone. With this in mind we have retained CAS Engineering to develop stormwater management plans in collaboration with landscape architects CampionHruby. See Revised Site Plan at IZIS Exhibit 73. The stormwater management plans rely on channelization, below-ground retention and infiltration, bioretention, and water-sensitive landscaping including significant afforestation. To be responsive to neighbor concerns and to design the best possible homes, we directed CAS to significantly oversize the stormwater management. The system will retain at least 185% of required volume and we are evaluating further conversion of permeable surface to increase the volume retained. The plan has received preliminary DDOE review with minor comments and has been submitted for full review.

As is standard in the neighborhood, recycling and trash will be managed in private space next to each house's garage.

c. Public education

The project is zoned for Murch Elementary School, Deal Middle School, and Jackson-Reid (formerly Wilson) High School. Murch and Deal have confirmed that they are able to accommodate new in-bounds students. See IZIS Exhibit 9 and Exhibit 10. Applicant was not able to confirm whether Jackson-Reid is at or near capacity, however it is unlikely that one additional household is a significant concern for DC's largest high school given that the city has a choice-based system allowing students to apply to out-of-bounds, selective, and citywide high schools. Moreover, allowing Jackson-Reid's popularity and status as the only traditional high school in Ward 3 to serve as a barrier to new home construction in Ward 3 would exacerbate Ward 3's under-contribution to construction of needed new housing.

d. Recreation

The project is not immediately adjacent to parkland or other recreational resources and will therefore not have any impact on such resources. The existing regulatory regime supports this conclusion as the subject property's distance from park resources means it is not covered by additional lot size and tree regulations established for park-adjacent lots, or review by the Council on Fine Arts. Nonetheless, the project's proximity to Soapstone Valley, Rock Creek Park as a whole, and the Forest Hills Playground make it easy for Applicants and the prospective owners of House Two to access a broad range of passive and active recreational activities regardless of their ages or abilities.

e. Parking, loading and traffic

The DC Comprehensive Plan calls for additional housing to be built within ½ mile of Metro stations because transit-accessibility is a key tactic for allowing the city to grow without exacerbating parking and traffic resources. This site is the only underutilized Forest Hills property available for additional primary housing within a ½ mile walk of the Metro but not subject to Commission on Fine Arts and additional Tree and Slope Zone restrictions.

The parking requirement will be fully satisfied on the Property. No existing on-street parking or loading areas will change or be impacted due to completion of the Project because House Two will use the existing pipestem driveway access and House One will have new access into a section of Appleton Street that is currently a no-parking zone. The ample driveway space leading to each house's garage establishes that all normal deliveries can and will be handled on-site. Both houses will be equipped with garage parking for bicycles as well as attractive walkway entrances to encourage cycling and walking rather than driving.

In contrast to many other District streets, Albemarle and Appleton Streets are not major thoroughfares and the project's size compared to a much larger full as-of-right development means that additional vehicle volume from the net addition of one single family house to the neighborhood will be de minimus. Albemarle does have relatively more traffic than Appleton, but the density accessing Albemarle will not change from the status quo. As for Appleton Street, an informal traffic count by applicant found a weekly-average flow of five cars per hour, and in no case exceeding 15 cars per hour so the addition of one single-family residence is unlikely to create congestion. At the PSC hearing, Chair Marcou noted that Appleton is designated as a "local" street and thus has the "lowest" level of traffic. See video of hearing at <https://transcripts.gotomeeting.com/#!/s/d343ac74fa1d43eaa2425562f766d04731b3ff5498605205dbe377fe6dbb36fc> at (5:01:35 - 5:02:43).

f. Urban design

Forest Hills is treasured for its natural beauty, but the zoning focus on single family homes on large lots makes it a difficult place to pursue what many might refer to as "urban design." As the Center for Design Excellence explains, "[u]rban design is derived from but transcends planning and transportation policy, architectural design, development economics, engineering and landscape. It draws these and other strands together creating a vision for an area and then deploying the resources and skills needed to bring the vision to life." <http://www.urbandesign.org/>.

The Mayor and City Council have made it clear that the city's vision is to increase infill, transit-accessible family-scale and accessory-scale housing. As the City Council-passed and Mayor-signed Comprehensive Plan Revised Amended Framework notes, a guiding principle is that "Housing should be developed for households of different sizes, including growing families as well as singles and couples, or all income levels." 10-A DCMR § 219.4. The Plan further explains that forgoing additional housing capacity on sites that could benefit from an entitlement process but are instead built as-of-right "represent(s) missed opportunities for the district to grow inclusively." 10-A DCMR § 205.6. The Comprehensive Plan calls out "underutilized sites" as those that should be targeted for additional housing. 10-A DCMR § 215.4. It also establishes a policy of "directing growth toward transit-rich locations." 10-A DCMR § 207.2.

The Project is designed to meet the zoning code's emphasis in R8 on large single family homes that work in context with their neighbors and the natural environment, while adding upgraded and additional housing in the Forest Hills square closest to the Van Ness Metro station, University of the District of Columbia, Van Ness Connecticut Avenue retail business cluster, and the Avenue's stretch of large apartment complexes. The site in question falls under the Comprehensive Plan categorization of an "underutilized site" because the current improvements not only "represent less than 30% of the potential built capacity ... under zoning" they are less than 15% of available (current lot coverage is less than 4.5%). 10-A DCMR § 215.4. It is the only such site in Forest Hills located within ½ mile of a metro station, and similarly the only lot larger than 15,000 square feet within ½ mile of the metro that is not subject to the additional lot size, tree protection, and design review protections that apply to Rock Creek Park-adjacent properties. Both proposed homes are family-scale, with lower levels that can be used for either multi-generational living (the intention of Applicants) or converted into Accessory Apartment Units to provide rental housing for smaller households. It is thus Forest Hills' best opportunity to achieve "gentle density" as outlined in the Department of City Planning's Single Family Zoning report. See https://plandc.dc.gov/sites/default/files/dc/sites/Comprehensiveplan/007_Single%20Family%20Housing

%20Report.pdf. In summary, if there is any way to advance the city's urban design goals in this community, adding one additional house to this 30,618 foot lot is it.

- g. As appropriate, considerations of historic preservation and visual impacts on adjacent parkland

The Project is not in a historic district and Applicants are unaware of any historical significance of the property or prior residents. The site is not adjacent to, nor can it be viewed from, any parkland.

- h. Site planning related to the size, location, and bearing capacity of driveways, deliveries to be made to the site, side and rear setbacks, density and open space, and the location, design, and screening of other structures

As discussed previously, the site plan maintains location and bearing capacity of driveways that have existed for close to a century while adding a direct-to-street access that changes nothing about parking, loading, sight lines or vehicle throughput for others. All deliveries can be handled via the off-street parking and garage access areas. Side and rear setbacks will comply with, or exceed, what an as-of-right single-family house project could apply. Density will remain well less than half of what an as-of-right project could take advantage of. The project is not adjacent to or viewable from public open space. In addition, the structures are placed further from other properties than would be allowed by a single as-of-right property while the landscaping plan surrounds the property with native trees and woodland plants designed to ensure the privacy of both the Project and its neighbors.

- i. The impact of neighboring properties

Applicants are unaware of any impact on neighboring properties that differ from as-of-right construction on the property. The plan as designed could be built as-of-right as a large, single house with the proposed footprints of House 1 and House 2 connected by an enclosed corridor. Even that scenario would use less than half of the available lot coverage, so if this project does not proceed the property could be sold to someone who would build a significantly larger structure with significantly smaller side and rear yards and without Applicant's commitment to afforestation.

In addition, positive impacts include the fact that the construction of House Two will require and thus allow the mitigation of a significant flow of storm and groundwater that now enters the property from the north and east, traverses the undeveloped eastern portion of the property, and flows into the pipestem driveway. Similarly, activation of the Appleton frontage by the construction of House One will address public safety and littering concerns experienced by the Appleton/31st Street neighbors. Finally, the afforestation of the western, southern, and northern boundaries of the project will increase forest health and improve the scenery for both the neighbors and the surrounding community.

j. The findings, considerations, and recommendations of other District government agencies

The project has been reviewed by ANC 3F, DDOT's Urban Forestry, DOEE's Stormwater Engineers, and the Public Space Committee. The ANC voted unanimously in support of the requested subdivision, the requested from setback relief (now removed), and the proposed Appleton Street curb cut. Aside from minor requested adjustments that Applicants have adopted, applicants are unaware of any substantive concerns raised by District government agencies. Applicants will continue to coordinate with all relevant agencies including but not limited to DCRA, DDOT, DDOE, and Fire.

k. No adverse effect on the present character and future development of the neighborhood

Applicants are unaware of any adverse effect on the present character and future development of the neighborhood. Nothing about the development will change the ability of neighbors to fully enjoy their properties, or access redevelopment or improvements under all rights allowed by zoning. Parking and street flow will be unchanged, and if anything improved because of the increased off-street parking capacity. The proposed homes fit well within the scope and feel of existing homes in the neighborhood. The Albemarle pipestem access is not a proposed new condition but instead has been in place since before any of the other existing houses in the square were built – at least since 1924 – and before issuance of the 1936 zoning map establishing lot coverage zones or the Zoning Act of 1938 establishing further

dimensional requirements. While the pipestem condition is reflected in the square by a similar pipestem condition to the west at 3045 Albemarle Street, that site is not large enough to be divided into two. Moreover, there are no other properties in the R8 zone that are both served by an existing pipestem and are large enough to be divided into two or more lot-size compliant properties.

Similarly, the placement of a single-family house on the property at the Appleton Street lot line is a condition that has existed since before Appleton Street was dedicated and built in 1953 – and thus before any of the Appleton Street or 31st Street neighboring houses were built. See History of Appleton dedication, subdivisions, and curb cuts, available at IZIS Exhibit 71.

Finally, the neighborhood hosts a number of other sites developed under theoretical subdivision, all of which have more intensive use on smaller lots. Applicants understand that some past theoretical subdivisions have upset neighbors by creating views that look denser than expected from an as-of-right build. See pictures of 3502-10 Springland Ln NW and 2943-51 Albemarle Street NW subdivisions, available at IZIS Exhibit 74. By contrast, because either of the instant proposed homes can be built as-of-right and the view from either Albemarle or Appleton Streets only allows someone to see one or the other of the two houses, the impact on neighborhood character is no different than an as-of-right plan.

VI.

The Application Meets the Requirements for a Variance from Required Minimum Lot Width

In the alternative, if the Board finds that the Applicant does not meet the standards for the aforementioned special exception, the Applicants respectfully submit that the Project meets the standards for a Variance from the Required Minimum Lot Width. Subtitle C, § 303 requires that “where a minimum lot width is required, the length of at least one (1) street lot line shall be at least seventy-five percent (75%) of the required lot width.” Subtitle D, § 502 requires that lots in the R-8 Zone have a minimum lot width of 75 feet. The street lot line requirement of Subtitle C, § 303 thus means that Lot Two is required to have a street lot line no less than 56.25 feet. The lot width requirements of Subtitle C,

§ 304.1 requires that the lot width of 75 feet be measured at the point between the two side lot lines 30 feet back from their intersection with the street lot line.

In this case Lot Two would be accessed by the current pipestem driveway which is 16.3 feet wide rather than the required 56.25 feet. This mirrors the existing condition, where the existing one-family house is accessible solely by the 16.3-foot-wide pipestem driveway, which is over 175 feet long from the street to the wider portion of the lot. While maintaining a 75-foot lot width through the main portion of the lot, the applicant thus requests a variance from the strict application of Subtitle D, § 502 as applied to Subtitle C, § 303 and Subtitle C §304 to allow the subdivision resulting in a street lot line and a lot width as measured 30-feet back from the street lot line of 16.3 feet, consistent with the current condition.

In order to obtain area variance relief, an applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition, (ii) the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and (iii) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose, or integrity of the Zone Plan. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972).

A. The Property is Affected by an Exceptional Situation or Condition.

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 on the property. Rather, it may arise from a “confluence of factors”. *Id.* In this case, the Property is affected by exceptional conditions based on a “confluence of factors.”

The Project site differs from others in the neighborhood in that a) the sole access has been via pipestem driveway since 1924, b) it is more than twice the size of any other lot in the square and is four times the minimum lot size, c) when the city platted/built Appleton Street and 31st Street they did not continue Appleton Street east to 31st Street and thereby stranded 141 feet of the lot’s total 216.3 feet of

northern boundary, and d) the Albemarle Street driveway access is subject to a right-of-way easement by two adjacent neighbors that limits Applicant's ability to change the access to the property.

This uniqueness exhibits itself in several ways, including the following. Under the city's normal grid-based system the northern 216.3 feet of property line would have been the Property's street lot line and allowed as-of-right subdivision into three record lots or theoretical subdivision into four lots via Special Exception.³ Moreover, the property has ten adjoining neighbors where most have two or three, again indicating its exceptional character. Finally, the round-trip walk from the current house site to the garbage/recycling point is in excess of 600 feet and thus in excess of a city block. The distance from the site to the Albemarle sidewalk is roughly 1,000 feet – a distance well in excess of anything else in the square or the neighborhood as a whole.

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

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established that the applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance" and "the severity of the variance(s) requested." *Id.*

As discussed above, the Property is subject to exceptional conditions due to the size and access. Strict application of the lot width zoning requirements here, both as to the width of the street lot line and the lot width measuring point, create a practical difficulty for the Applicant because it does not allow for

³ Applicants do not claim that the city had any obligation to do otherwise, but this factor does clearly differentiate the subject property from other properties in the square, the neighborhood, and the City.

the construction of a reasonably sized single-family home on an otherwise compliant lot, utilizing the existing pipestem condition. DDOT policy, moreover, does not allow the site driveway access to Appleton Street unless record subdivision is granted so would require continuation of the current 600-1,000 foot walks just to access trash/recycling or the sidewalk.

Thus, strict application of the Zoning Regulations would require Applicants to retain the oversized lot as a single property and either a) build a much larger home, likely impracticably large, and then enter into the business of renting out an auxiliary apartment, or sell the site to someone who wants that, or b) leave over 75% of the buildable lot coverage unused by building either House One or House Two by themselves neither of which uses more than 7% total lot coverage. Building a larger home with or without an apartment is not Applicant's desire, nor do their finances allow it. Leaving over 75% of the buildable lot coverage unused substantially reduces the land use efficiency and the Project's viability, which will in turn a) reduce or eliminate Applicant's financial ability to activate the Appleton Street frontage and vehicle access, b) reduce or eliminate Applicant's financial ability to afforest and landscape the western, northern and southern boundaries, and c) reduce or eliminate Applicant's financial ability to fix the longstanding storm and groundwater issues caused in large part by inflows from the north and west onto the eastern half of the property as well as along the pipestem driveway. In addition, maintaining the current Albemarle street/sidewalk/solid waste disposal access for a house built on the current Appleton street site would significantly inconvenience the residents of that house compared to neighbors who walk only dozens of feet to access the street/sidewalk/solid waste disposal instead of hundreds.

These practical difficulties are not only unique to the subject property, they dramatically impact the viability, expense and inconvenience of the Project.

C. Relief can be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose, and Integrity of the Zone Plan.

Finally, the Applicant must demonstrate that “granting the variance will do no harm to the public good or to the zone plan.” *Gilmartin*, 579 A.2d at 1167. Here, the requested variance can be granted without causing any adverse impact on the neighboring properties or to the Zone Plan as compared to either the current situation or an as-of-right build.

R-8 zoning is designed to protect neighboring properties from adverse impact through height limits, side and rear yard requirements as well as other conditions that the proposed Project meets and a much larger as-of-right project could meet. There is no impact on the neighborhood and the zoning regime because the lot width issue will simply continue allowing a single-family home to have its only vehicular access to Albemarle Street through the long-established pipestem driveway. Additionally, another project developer could build a significantly more intensive project with more lot coverage, more nonporous surface, smaller setbacks and higher rooflines as-of-right.⁴ The proposed plan does not impact parking or other public resources, and indeed improves the situation by providing all parking, loading, and solid waste management on-site. In addition, the proposed plan will improve storm and groundwater management problems that have impacted neighboring properties since the neighborhood’s inception. It will also activate a section of Appleton Street, without any change to available parking or vehicle sightlines, where neighbors have noted that the current inactive state attracts public safety problems.

Other factors the Board may want to consider include the fact that 1) the Fire Department has reviewed the site plan and does not object, 2) capacity at zoned schools is sufficient to enroll new in-bounds students, 3) the plan does not create pollution concerns and mitigates existing stormwater and groundwater concerns, 4) storage for trash and recycling will be provided on-site, 5) despite the neighborhood’s ample park and recreational amenities, the project is not immediately adjacent to or

⁴ A much larger build would be well within the size range set by a number of other properties in Forest Hills. For example, 3301 Fessenden Street was recently built to 17,631 square feet at or over 30% lot coverage on a 0.4 acre lot. See <https://www.redfin.com/DC/Washington/3301-Fessenden-St-NW-20008/home/9981183>. Another example is 4410 & 4420 Linnean St NW, where two homes are proposed to cover almost 19% of a 32,553 square foot lot despite a very sensitive site immediately adjacent to Soapstone Valley and on a severe hillside.

viewable from any of them, and 6) the sites provide ample parking and space for off-street deliveries by up-to-26-foot box trucks. Communications from the Fire Department and zoned schools are available at IZIS Exhibit 8, Exhibit 9, and Exhibit 10.

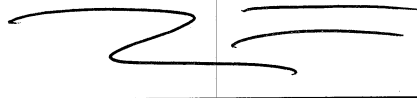
Additionally, the Project helps achieve the District's goals related to housing and will contribute a significantly above-average amount to the city's property tax rolls. The Project will benefit the public by efficiently developing an underutilized parcel to provide additional transit-accessible housing in accordance with the city's statutory goals to increase both the number of residents and the degree of homeownership by families in the District. The Project does all this while staying well within – and in fact enhancing – the specific goals of the R-8 zone.

VII.

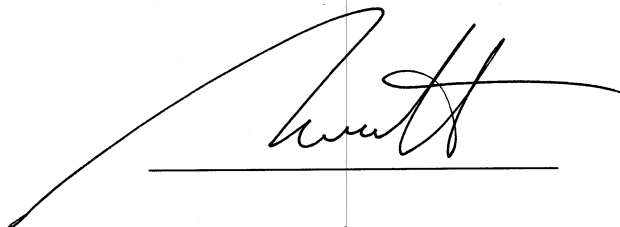
Conclusion

For all of the above reasons, the Applicant is entitled to the special exception and/or variance relief requested in this case.

Respectfully submitted,



Paul E. Harrison



Nezahat O. Harrison