

**Statement of the Applicant
Request for Special Exception and Variance Approval
1837 Vernon Street NW**

On behalf of Karen Marsh (the “Applicant”), the owner of the property located at 1837 Vernon Street NW (Square 2555, Lot 0036) (the “Property”), we are submitting this request for Special Exception relief from Subtitle F § 207.1, pursuant to Subtitle F § 5201.1 and Variance relief from Subtitle F §§ 201.1 and 210.1 under Subtitle X §§ 1000.1 and 1002.1 of the Zoning Regulations. Specifically, the Applicant is seeking relief to allow for (1) the construction of an elevated egress stair/walkway within the required rear yard, which exceeds the lot occupancy standards; and (2) construction of a 64 square foot upper level addition to accommodate an interior access stair, which exceeds the Floor Area Ratio (“FAR”) standards. These modifications are necessary to permit the creation of an apartment on the upper level of the existing row building, consistent with the intent of the RA-2 Zone and the Property’s historic use. Importantly, the proposed construction will not have any adverse impacts on the surrounding community, and no objections have been raised by nearby neighbors. In fact, the immediately adjacent property owners have expressed their support for the application.

I. Board's Jurisdiction

The Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant the Special Exception relief requested pursuant to Subtitle F §§ 5201.1 of the Zoning Regulations, in accordance with the provisions of Subtitle X § 901; and the variance relief requested herein pursuant to Subtitle X §§ 1000.1 and 1002.1.

II. Site Location and Characteristics

The Property is located along Vernon Street NW, approximately equidistant between 18th Street and 19th Street, in the RA-2 zoning district. The Property is also located within the Washington Heights Historic District. The Property has a net lot area of approximately 1,733 square feet and is currently improved with an approximately 3,805 square foot, four-story row dwelling that was built circa 1899. The row building contains six bedrooms and four bathrooms, and was previously operated as a group home, for decades. The building was converted to a single-family dwelling in 2006. Consistent with the intent of the Residential Apartment Zones, which is to allow all types of residential development, the Property is surrounded by a mix of residential uses, including single-family residential, as well as multi-family rental and condominium buildings.

III. Requested Relief

The requested relief is driven solely by the need to provide access to the upper level apartment.

Based on the existing building height, Subtitle F Section 207.1 requires a minimum 15' rear yard. The rear yard is required to be open and unobstructed to the sky, with certain exceptions (Subtitle B Section 324.1). The Property is currently improved with an accessory garage, which is located *within* the required rear yard. This is a grandfathered non-conforming structure that can remain, pursuant to Subtitle C Section 202.1. However, given the grade on-site, in order to provide code required egress to the proposed upper level apartment, the Applicant must construct a stairway through the existing garage, which connects to an elevated walkway/stair located between the garage and primary building.

The Property currently has a non-conforming rear yard (*i.e.* 10'-2") and is non-conforming with respect to lot occupancy (*i.e.* 84.19% existing). Subtitle C Section 202.2 allows for enlargements or additions to non-conforming structures where the addition (1) conforms to the use and development standards, (2) neither increases nor extends any existing, nonconforming aspect of the structure; nor creates any new nonconformity of structure and addition combined. The Applicant believes the elevated walkway/stair are permitted by Subtitle C Section 202.2, as they are a permitted encroachments in the rear yard pursuant to Subtitle B Section 318 and should not count toward lot occupancy under Subtitle B Section 312. Specifically, with respect to the rear yard, Subtitle B Section 318 provides that "[s]tairs leading to the ground from a door located on the story in which the principal entrance of a building is located may occupy any yard required...". Similarly, with respect to lot occupancy, Subtitle B Section 312 provides that for purposes of lot occupancy calculation, building area shall not include "[u]ncovered stairs, landings, and wheelchair ramps that serve the main floor." Here, the proposed, uncovered stairs/landing are necessary to provide access to the principal entrance/main floor of the upper floor apartment.¹ However, the Department of Buildings has taken the position that these exceptions do not apply to the upper level unit and that the Applicant must seek relief to locate the elevated walkway/stair in the required rear yard and increase the lot occupancy.

The Property also is currently non-conforming with respect to density (*i.e.* 2.2 FAR existing). To accommodate access to the upper level apartment, the Applicant needs to construct an interior access stair from the third to fourth floor. Most of the stairwell can be accommodated within the existing building envelope, however, a 64 square foot stair enclosure is necessary to provide necessary headroom at the top of the stairway. There is no alternative way to provide this stairway connection, while still maintaining necessary security and separation between the two units.

¹ The Applicant previously received building permit approval for the elevated stair/walkway, but did not move forward with construction prior to the permit's expiration. It was only when the Applicant re-applied for the building permit that the need for this relief was brought to the Applicant's attention.

IV. Proposed Construction

The Applicant has resided in the existing dwelling for over the past 30 years and desires to remain. However, the large, historic home is much bigger than the Applicant's family needs. As such, the Applicant desires to create a second apartment on the upper floor of the existing building, to provide additional housing in this desirable neighborhood. This Application will help to address the region's housing crisis and meet the Mayor's goal of delivering additional housing units. Notably, the additional housing provided by this proposal will be in keeping with the historic use of this Property, which was previously occupied as a group home for approximately 30 years, from the '70s until 2006.

The upper level of the home is uniquely situated for conversion to an apartment unit, as it already has the plumbing and electrical for a bathroom and kitchen (stemming from the prior group home use). However, the apartment will require a separate, dedicated egress. To accommodate this code-required egress, the Applicant is proposing an exterior egress stair/walkway, which will provide exterior access from the alley to the third floor. Given the depth of the Property and location of the existing rear façade, to complete the access to the fourth floor, the Applicant must construct an interior stair (between the third and fourth floors). While most of this interior stairwell can be accommodated within the existing building envelope, the Applicant must construct a small 64 square foot addition on the 4th floor to provide necessary headroom at the top of the stairs. It is these access/egress modifications that are triggering the need for relief.

The Applicant initially received building permit approval for an elevated egress stair/walkway in 2021 but didn't move forward with the construction prior to expiration of the permit. It was only when the Applicant re-applied for a building permit with improved drawings by a new architect, that the need for this relief was identified. The Applicant has also obtained Historic Preservation sign-off for the proposed work. The Applicant has spent considerable time and money on multiple designs, and has lost considerable rental income due to approval delays.

V. Special Exception Justification

Subtitle X § 901.2 permits the Board to grant a special exception where a proposed use will (1) *be in harmony with the general purpose and intent of the Zoning Regulations and Zone Maps*, and (2) *not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps*, subject to the specific conditions specified in the Zoning Regulations for each use. Subtitle F § 5201.4 of the Zoning Regulations sets forth additional criteria for special exception relief from the development standards of the RA-2 Zone, as discussed in detail below.

A. The Special Exception Request Meets the General Special Exception Requirements of Subtitle X § 901.2

The proposed building alteration is consistent with the general purpose and intent of the Zoning Regulations and Zoning Map. The Property is located in the RA-2 ("Residential Apartment") Zone. The Residential Apartment zones are "designed to provide for residential areas

suitable for multiple dwelling unit development and supporting uses.” (See Subtitle F Section 101.1). The purpose of the RA-2 Zone is to “[p]ermit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for these districts.” The RA-2 Zone “provides for areas developed with predominantly moderate-density residential” and would permit multiple residential dwelling units on the Property.

The residential use of the Property will remain unchanged with this application. The application merely allows for the creation of an upper level apartment, as permitted by the RA-2 Zone. This additional unit is in keeping with the historic use of the Property, accommodating multiple DC residents as a group home. In fact, based on that previous use, the upper floor already has the necessary infrastructure (e.g. kitchen, bathroom etc.) for an apartment. The proposed modification conforms to all development standards of the RA-2 Zone, with the exception of the relief needed for the code-required egress proposed by this application. For these reasons, the proposed modification is fully consistent with the purpose and intent of the RA-2 Zone.

The Property is located within the Mid-City Area Element of the Comprehensive Plan. The Mid-City Area Element recognizes the importance of providing a mix of unit sizes, and opportunities for both homeownership and renting. (See Policy MC-1.1.5). This Application seeks to accomplish exactly this. The Applicant has lived in this Property for over 30 years and wishes to remain. However, through the creation of an upper level apartment, this application will provide a smaller-sized rental unit and increase the housing diversity within this desirable neighborhood.

B. The Applicant Meets the Specific Requirements of Zoning Regulation Subtitle F § 5201.1 for Zoning Relief from Development Standards of the RA-2 Zone.

Exceptions to the development standards of the RA-2 Zone are permitted, pursuant to Subtitle F § 5201.1, if the requirements of Subtitle X § 901.2 are met and subject to the following additional provisions:

- i. Section 5201.4. An application for Special Exception relief under this section shall demonstrate that the proposed addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, specifically:*
 - a) The light and air available to neighboring properties shall not be unduly compromised;*

The light and air available to the neighboring properties will not be unduly affected by the proposed alteration. The proposed elevated walkway/stair will be constructed of steel framing with anti-slip steel walking surface and has an open design that allows light to pass through it. The upper level addition is only 64 square feet and has a partially sloped roof, which further minimizes its impacts. As such, the proposed alterations will only cast minimal additional shadow on the adjacent properties.

- b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*

The proposed alterations have been designed to ensure that the privacy, use and enjoyment of the neighboring properties will not be unduly compromised. The proposed elevated walkway/stair, which is triggering the need for this Special Exception relief, does not result in any additional outdoor living space that would intrude on the adjacent neighbors' privacy. In fact, the adjoining neighbor to the west has a very similar condition on their property. Furthermore, the proposed apartment will be largely accommodated through interior renovations of the existing building. The Applicant is only proposing a modest 64 square foot enclosure with this renovation, to accommodate an interior access stair, with code required head height (between the third and fourth floors).

- c) The proposed addition and accessory structure, together with the original building, as viewed from the street, alley and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street or alley frontage;*

As indicated by the photos submitted as part of this application, the proposed alterations will not visually intrude upon the character, scale, and pattern of houses along the subject street frontage. In fact, the proposed elevated walkway/stairs and upper floor interior stair addition will not be visible from Vernon Street. The elevated walkway/stairs, although visible from a portion of the alley (approximately the distance of three houses on either side), will not visually intrude upon the character along the alley frontage. Many of the surrounding homes (including the immediately adjacent property) have similar stairs that provide exterior access to the third floor. And confronting the property, on the opposite side of the alley, are several multi-family buildings that have egress stairs and patios serving multiple floors. The small, 64 square foot enclosure for the interior stair has been designed to blend seamlessly in with the existing building architecture and will not expand the overall building footprint.

- d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the Applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways;*

The photographs and architectural drawings submitted concurrently with this Statement demonstrate that the proposed alteration is compatible with the surrounding area and will not have any adverse impacts on the adjacent property or surrounding neighborhood.

VI. Variance Justification

The Applicant is seeking variance relief from the Board to allow for an increase in: (1) lot occupancy, resulting from the code-required, exterior egress stair/walkway, and (2) FAR, as a

result of the 64 square foot upper floor addition necessary to accommodate headroom for the interior access stair. The proposed modifications result in nominal increases in both lot occupancy and FAR. Specifically, the lot occupancy will increase only by 3.51% and the FAR will only increase by 0.03. However, because the Property is already non-conforming with respect to both lot occupancy and FAR, these minor modifications trigger the need for variance relief.

The Board is authorized to grant variance relief, pursuant to Subtitle X §§ 1000.1 and 1002.1(b), as authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3), where it finds that: (1) the Property is affected by exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition; (2) as a result of these specific attributes of the property, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the Property; and (3) the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. As demonstrated below, the Applicant meets these required findings:

A. The Property is affected by exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition.

The phrase "other extraordinary or exceptional situation or condition" applies to both the characteristics of land and the existence of improvements on the land. See *Clerics of St. Viator, Inc. v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974) (*emphasis added*). The "extraordinary or exceptional situation or condition" may also arise from a confluence of factors that affect a single property. See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). Here, the Property is characterized by an exceptional situation and condition arising from the existence of a row building, constructed circa 1899, and now located in a Historic District, which was occupied as a group home for approximately 30 years. Given the prior use of the Property as a group home, the plumbing and interior infrastructure is already located on the 4th floor to easily accommodate an apartment. However, to utilize this existing infrastructure and provide an additional apartment unit, consistent with the intent of the RA-2 zone, the Applicant must provide access and egress to the upper level. Given the grade change on-site, this necessitates the construction of an egress stair and walkway, to connect the alley to the existing house. The proposal has been designed to minimize the increase in lot occupancy, to the maximum extent practicable. Specifically, this stair and walkway results in only approximately 60.8 square feet of additional coverage, which increases the lot occupancy by 3.51%.

Given the depth of the existing rear yard and location of the third floor rear façade, the Applicant must construct an interior stairwell to complete the access to the fourth floor (which is setback from the rear façade). While most of this interior stair can be accommodated within the existing building, to provide necessary headroom on the fourth floor, a small 64 square foot addition must be constructed.

As mentioned above, the Property is located in the Washington Heights Historic District. The Applicant already received historic approval for the proposed modifications. The location of the Property within a historic district is also an extraordinary situation that adds to the challenges the Applicant must overcome in seeking to utilize the Property in accordance with the intent of the underlying Zone.

B. The strict application of the zoning regulations would result in exceptional and undue hardship.

Strict application of the Zoning Regulations will result in exceptional and undue hardship to the Applicant by precluding the Applicant from utilizing the existing infrastructure within the building to provide additional housing, consistent with the Property's historic use and the intent of the current zone. In fact, strict application of the Zoning Regulations would prevent the Applicant from making any expansion to the existing structure. As discussed herein, based on the prior group home use, the upper level of the building is currently built-out to accommodate an apartment unit, with the bathroom and kitchen already existing. The Applicant is merely seeking minor modifications to provide legal fire separation and egress to this unit. The Applicant would experience exceptional and undue hardship if she were unable to locate the apartment on the upper floor, as significant interior modifications would be required to accommodate the unit elsewhere in the building (which would essentially require the Applicant to gut and redesign the entire interior).

C. The Variance relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The variance will allow for the construction of an upper floor apartment within the existing row building, consistent with the purpose and intent of this Residential Apartment Zone. As discussed above, the Property is located within the Mid-City Area Element of the Comprehensive Plan. The Mid-City Area Element recognizes the importance of providing a mix of unit sizes, and opportunities for both homeownership and renting. (See Policy MC-1.1.5). This variance will allow for the creation of an upper level rental apartment unit, to add to the housing diversity in this desirable neighborhood. The proposal will promote many goals and objectives of the Zone and the City, as expressed through the Plan. As such, the variance application will not substantially impair the intent, purpose and integrity of the zoning regulations and map.

The Property will continue to be used for residential use and the proposed modifications (which will not be visible from Vernon Steet) will be in keeping with the character of the surrounding neighborhood. The variance will not cause substantial detriment to the public good

but rather, will promote an important public policy objective of increasing housing supply in the City.

VII. Conclusion

For the reasons set forth above, we respectfully request the Board of Zoning Adjustment's approval of the requested Special Exception and Variance. The proposed Application will be compatible with the surrounding neighborhood and allow for the creation of an upper floor apartment, in the existing row building, in support of the Mayor's housing targets.

Respectfully submitted,



Elizabeth Rogers