

## **WASHINGTON D.C. BOARD OF ZONING ADJUSTMENT**

### **IN THE MATTER OF**

### **PAYNE LIVING TRUST**

### **BURDEN OF PROOF FOR VARIANCE**

Pursuant to Asha Payne and Onay Payne as Trustees of the Payne Living Trust (“Petitioners”) submit this amended burden of proof to show that pursuant to DC Zoning Code, Title 11, Subtitle U, Section 250.1, a variance with special exemptions on Petitioner’s home should be granted.

#### **I. Introduction.**

This statement and the attached documents support the application of Asha and Onay Payne to the Board of Zoning Adjustment for the Property known as 10 Girard St. NE, in Square 3500, Lot 0082 (hereinafter, the “**Property**”). The Property is located in Ward 5, ANC 5E, and zoned as R-3. This special exemption and use variance will facilitate the conversion of the basement of a pre-existing attached row house to a separate apartment unit and allow both units to be rented out, providing housing for two (2) families, resulting in more residential accommodations than currently offered at the Property.

#### **II. Nature of Relief Sought**

Special exemption relief, pursuant to Subtitles (U §205.2), (D §5201.4), and (X §901.2) from the requirements for lot occupancy, and as used as a residential flat/multi-family residential unit, the Project requires a use variance pursuant to Section D-210.1 to develop a multi-family residential unit in an area that does not permit multi-family residential units.

#### **III. Jurisdiction of the Board**

The board has jurisdiction to grant the relief requested pursuant to Subtitle X Section 900 and Section 1000.1 of the Zoning Regulations.

#### **IV. Description of the Property and Surrounding Area**

##### **a. Description of the Property**

The Property is zoned R-3 and is an attached row house on Girard St. NE, attached on both sides to other residences. There is an existing sidewalk for pedestrians to commute safely. The Property sits on a 1,334 sq ft lot.

b. Description of the Surrounding Area

The Property is attached to single-family row homes on the block of Girard Street NE. Across the street from the Property are more attached, single-family row homes with additional basement-level entrances. McMillan Park is a mere .5 miles from the Property, Trinity Washington University is also located .4 miles from the Property, and the Brookland-Catholic University of America Metro Station is a mile from the property.

**V. Proposed Project Description**

The Applicant proposes to develop an affordable two-unit, multi-family residential flat in a preexisting single-family attached row house. A Use Variance will be required as currently in Zone R-3, apartment houses are not permitted as a matter of right. The basement unit will consist of One bedroom, a bathroom, a kitchen, a den, recreation space and its own street entrance. The first-floor unit will possess the remaining floors in the Property. This unit will consist of two bedrooms, two bathrooms, a den on the upper floor, a kitchen, a bathroom, and living room space on the entry level. The Project will also require separation of utilities between the units including HVAC, and removing the stairs that access the first floor from the basement. The Project proposes to maintain the existing floor area requirement, lot occupancy, height, and setbacks. The Applicant is not altering the existing Building exterior envelope.

**VI. The Application Satisfies the Requirements for Variance Relief**

The Applicant seeks one variance: one (1) use variance. An application for a use variance must prove that as a result of the attributes of a specific piece of property described in 3103.2, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the property.

A. Attributes of the Specific Property

The property already has a specific basement entrance as well as access to the rear of the property in addition to the access points on the first level, and is of proper size to maintain compliance with relevant area standards should the basement be converted to a separate unit.

B. Exceptional Situation Resulting in an Undue Hardship

In order to prove an extraordinary or exceptional condition or uniqueness, the Applicant must show that the Property has a peculiar physical aspect or other extraordinary situation or condition. *Monaco v D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1096 (D.C. 1979). A property's uniqueness is not limited to physical aspects of the land and may be determined by "some difficulty not shared by the entire neighborhood." *Id.* At 1098.

This property seeks to serve "the missing middle" and will be marketed as such. Housing for the missing middle as it relates to this project can be defined as "small to medium-sized attached structures that consist of 2 to 16 multi-story dwelling units placed side by side." The Applicant and Project Designers have endeavored to make a compatible "townhouse scale" form using predominantly, the existing architecture and site plans found in a typical D.C. residential development.

The Property itself is not necessarily unique in that like other properties in the surrounding area, it has its own basement street entrance and first-floor street entrance and exit. However, it is unique in that it will be used to offer more housing accommodations than is currently offered at the Property and is in line with the District's goals on increasing the housing accommodations available and continues to do so in a manner consistent with the existing density of the surrounding area.

The Applicant is not proposing to alter the existing Building footprint. The Project contemplates adding a unit in the existing basement space. The location near bus lines, Edgewood Recreation Center, and the existing nature of the area are conducive to the addition of a unit in the Property and preferable to adding units elsewhere in the District where access to transit and other resources is not as convenient.

C. The variance will serve the public good.

Petitioners seek a variance for the conversion of a multi-family home pursuant to the public good doctrine, a principle recognized by D.C. Courts to justify variances in zoning codes. The argument in support of this variance centers on its contribution to the public good by addressing the critical need for affordable housing and improving living conditions, making housing more accessible for individuals where it is a necessity.

District of Columbia Courts have consistently upheld variances that serve the public good. This doctrine allows for exceptions to zoning codes when it can be demonstrated that the variance benefits the community at large. The purpose of zoning regulations is to safeguard the welfare of the community, and the public good doctrine provides flexibility to accommodate circumstances that advance broader societal interests. *McDonald v. D.C. Bd. of Zoning Adjustment*, 291 A.3d 1109, 1119 (D.C. 2023); see also *Durant v. D.C. Zoning Comm'n*, 139 A.3d 880, 883 (D.C. 2016).

The proposed multi-family home conversion directly serves the public good by tackling the issue of affordable housing. Housing affordability is a pressing concern, and this conversion would create additional affordable housing units within the area. Allowing two extra families to reside in this space significantly contributes to mitigating the shortage of affordable housing options. Beyond increasing housing availability, this conversion aims to improve the quality of living conditions. By enhancing the residential environment, it creates a more habitable and supportive community for all residents involved. This aligns seamlessly with the public good doctrine as it promotes the general well-being of community members and fosters an improved social fabric.

In consideration of the established legal precedent supporting variances for the public good and the specific merits of the petitioners' proposal, granting the variance with special exemptions for the multi-family home conversion is urged. This decision not only upholds legal principles but also addresses the pressing need for affordable housing and improved living conditions in the community.

Further, granting the variance for the multi-family home conversion will not constitute a substantial detriment to the public good. The proposed variance is designed to ensure that the conversion will not introduce any adverse externalities, such as increased noise, traffic, or light, that could negatively impact the community. Therefore, the variance aligns with the public good doctrine, as it safeguards against potential nuisances and ensures the harmonious integration of the converted property into the existing neighborhood.

By allowing this variance, the zoning board will contribute to the betterment of the community by meeting a critical need for affordable housing, thereby fulfilling the spirit of the public good doctrine.

#### **VII. Consistency with Zoning Intent**

The requested variance for the multi-family home conversion aligns seamlessly with the general intent and purpose of the zoning regulation map. The purpose of zoning regulations is to promote the overall welfare and order of the community. In this case, the proposed variance is consistent with the underlying principles of the zoning regulations, as it addresses a critical need for affordable housing without deviating from the fundamental objectives of the zoning map. Granting the variance will contribute to the realization of the intended goals of the zoning regulations, rather than contradicting or undermining them.

#### **VIII. APPLICANT SATISFIES THE BURDEN FOR SPECIAL EXCEPTION RELIEF**

The Applicant requests special exception relief pursuant to Subtitles (U §205.2(a)), (D §5201.4), and (X §901.2) from the requirements for lot occupancy. Pursuant to D.C. Code § 6-641.07(g)(2) and 11 DCMR X §901.2, the Board is authorized to grant a special exception where it finds the special exception (a) will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps; (b) will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and (c) will meet such special conditions as may be specified in this title.

**(1) The Relief is Harmonious with the General Purpose and Intent of the Zoning Regulations and Maps**

The special exception relief will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps. The Applicant seeks to serve the missing middle and will be marketed as such. [www.missingmiddle.com](http://www.missingmiddle.com) defines this as “house-scale buildings with multiple units – compatible in scale and form with detached single-family homes s- located in a walkable neighborhood.” The Applicant and the architects have endeavored to make a compatible “house-scale” form using the existing entrances of the basement from the Street and the backyard, no additional structures will be added to the outside, which allows the Property to naturally blend in with the traditional single-family homes in the area. The relief requested would result in no changes to the existing structure from the outside, thus keeping in harmony with the General Purpose and Intent of the Zoning Regulations and Maps. Further, the non-residential use of the property being a rental property for the Payne Living Trust is capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to the noise, design, or other objectionable conditions. The mere fact that the owner of the property will not be maintaining a residence at the address, will not change the occupancy level of the property, as the property will still maintain a single residence above ground, with the additional residence located in the basement area of the home.

**(2) The Project Satisfies the Special Condition of Relief Will Not Tend to Adversely Affect the Use of Neighboring Property**

The Project will not adversely affect the use of the neighboring properties, including as to light, air and privacy. The building design is all internal construction and re-configuration of the existing structure to all of two separate entrances for the two tenants who will be occupying the two separate spaces. The two separate entrances are already

in existence, and in conformity with the neighboring properties, thus the Project will not adversely affect the use of the neighboring properties, including as to light, air, and privacy.

**(3) The Project Satisfies the Special Condition of 11 DCMR Subtitle X §901.2**

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the relief are met. In reviewing an application for special exception relief, “[t]he Board’s decision...is limited to a determination of whether the exception sought meets the requirements of the regulation.” *President & Dirs. Of Georgetown College v. D.C. Bd. Of Zoning Adjustment*, 837 A.2d 58, 68 (D.C. 2003); *see also Georgetown College v. D.C. 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.*

**IX. Conclusion**

This application satisfies the regulatory requirements for variance relief, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

/s/Lucrecia P. Johnson  
Lucrecia P. Johnson  
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Date: October 31, 2023