I. VARIANCE TEST:

X-1000.1: With respect to variances, the Board of Zoning Adjustment has the power under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3) (formerly codified at D.C. Official Code § 5-424(g)(3) (2012 Repl.)), "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief 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."

Prong 1 & 2: Exceptional Situation that would result in Practical Difficulties

- As demonstrated in the 900-ft. rule case chart attached as an exhibit, specifically in cases 19517, 20116, 21081, 21335, 20002 and 19574 it has been determined previously that purchasing a property with an existing illegal nonconforming condition that has been operated as such by former owners and is purchased by a subsequent owner is an exceptional situation leading to a practical difficulty when the option is to remove the unit of housing and/or somehow combine the space into existing units.
- As demonstrated in the 900-ft. rule case chart attached as an exhibit, specifically in cases 20289, 19959, 19718, 19625, and 19570, it has been determined previously that a purpose-built apartment building that was constructed pre-1958 and modernizes, leaving it with vacant space on the basement floor is unique, and that the subsequent practical difficulty related to maintaining vacant space meets the variance test.

Prong 3:

"Provided, that the relief 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."

Under the plain interpretation of this regulation, does it have to MEET the intent? **No**. It simply must not substantially impair the intent. "Substantially impair" means to significantly hinder or diminish the functionality, value, or safety of something. So, the question then becomes: will granting the relief SUBSTANTIALLY diminish the value of the zoning regulations? Because a variance is inherently requesting a deviation from the zoning regulations that is not enumerated in said regulations as a special exception. So, no variance would therefore MEET the strict intent of the regulations—and that is not the standard. It must not SUBSTANTIALLY impair the intent. *So how is this reviewed historically by the Board and Court of Appeals?*

It has generally been reviewed in context with the stated goals of the zone, relative to the location and neighborhood in which the subject property is located, and in many cases, the fact that the first two prongs relate to an **existing nonconforming aspect predating the applicable zoning regulations.**

Specifically, in the context of adding units to purpose-built apartment buildings, the steepest degree of relief was in 400 Seward Street (Case No. 20289), where the Applicant added two units to the basement floor of an existing apartment building, and would only have 200 sq. ft. per unit. OP's report noted:

> The addition of three units in an existing 14-unit, purpose-built apartment house should not cause substantial harm to the Zoning Regulations. **The apartment house predates the 1958 Zoning Regulations and is an existing nonconforming building**. The requested relief would allow the applicant to make use of otherwise unusable space in the cellar to create two additional dwellings in a mixed-use, transit-accessible neighborhood. An existing unit that is not permitted by the Certificate of Occupancy has been in existence for several years and has been occupied, so the impact to the neighborhood would be negligible. There are no exterior modifications proposed for the building, so the height and massing of the structure would continue to be appropriate for the neighborhood in which it is located.

This discussion is continued below, in other Board orders, and in DC Court of Appeals cases.

A. Board Orders

The Board has had a handful of Full Orders for the 900-foot rule cases. (**See Exhibit-BZA Variance Full Orders**). The most recent full order granting a variance from the 900-square-foot rule was issued in 2022. In that decision, as in other recent full orders, a few of which are noted below, the Board analyzed the third prong of the variance test by focusing on the surrounding area to determine whether the requested relief would substantially impair the zone plan and maps. The Board has consistently concluded that when considered in context with the property's circumstances and the intended uses of the zone, such relief does not amount to a substantial impairment.

In cases involving purpose-built apartment buildings, expansion is ordinarily permitted as a matter of right; the only limiting factor is whether there is sufficient land area to support the additional units.

Here, the subject property presents unique circumstances relative to neighboring properties. The surrounding neighborhood context confirms that the requested relief will not substantially impair the intent, purpose, or integrity of the zone plan. To the contrary, the proposed use is consistent with uses expressly contemplated by the regulations. Granting the variance simply addresses site-specific limitations that prevent technical compliance with the land area requirement, without

undermining the broader objectives of the zoning scheme. Which is the intent of the variance process.

1. **Case No. 18312 of Rashid Salem**

a) Summary: The application was filed pursuant to 11 DCMR § 3103.2 for an area variance from the minimum lot area requirement under § 401.3 to allow a conversion of a one-family dwelling into a four-unit apartment house in the R-4 District at premises 1341 Irving Street, N.W. (Square 2848, Lot 815). Following a public hearing, the Board of Zoning Adjustment (the "Board") voted 4-1 on March 13, 2012, to grant the application.

b) Discussion of third prong on page 6: **As to the integrity of the zone plan**, the OP noted that delivering housing comports with the District's high-priority objective of increasing the number of residents in the District. Moreover, the project conforms to the Comprehensive Plan for Ward 1, which encourages development near Metrorail stations and neighborhood stabilization. **Lastly, the R-4 Zone typically contains moderately dense neighborhoods, which frequently contain smaller apartment units.**

2. **Case No 18448 of 3579 Warder Street LLC**

a) Summary: The application, as amended, requests area variances from requirements pertaining to maximum lot occupancy under § 403.2, the enlargement of a nonconforming structure tinder § 2001.3, and minimum lot area under § 401.3 to allow the enlargement and conversion of a two-story, 11-bedroom rooming house to a three-story, four-unit apartment house in the R-4 District at 1221 Otis Place, N.W. (Square 2829, Lot 57). Following a public hearing, the Board of Zoning Adjustment ("Board") voted to approve the application on January 15, 2013.

b) Discussion of the third prong on page 8: Similarly, the Board does not find that approval of the requested variance relief would substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. **Conversion of the building into a four-unit apartment house will cause the property to remain in residential use in a manner consistent with the relatively lower density residential use of the surrounding neighborhood. The size of the Applicant's building, as enlarged, will remain consistent with the generally two- and three-story buildings in the vicinity of the subject property.**

3. **Case No. 18570 of 1845 North Capitol Street NE LLC**

a) Summary: The application was filed pursuant to 11 DCMR § 3103.2 for an area variance from the minimum lot area requirement under § 401.3 to allow a conversion of a two-unit flat into a three-unit apartment house in the R-4 District at premises 1845 North Capitol

Street, N.E. (Square 3510, Lot 22). Following a public hearing on June 18, 2013, the Board of Zoning Adjustment (the "Board") voted 3-0 in a bench decision to grant the application.

b) Discussion on the third prong: The Board further finds that variance relief can be granted to this applicant without substantial detriment to the public good or the integrity of the zone plan. **The R-4 District permits conversions to multiple family dwellings subject to a land area condition that cannot be met here.** The additional density resulting will not prove , detrimental to the neighborhood and the conversion of the vacant property will remove an existing adverse condition.

4. Case No. 19570 of GWC 220 Residential LLC

a) Summary: The Application was filed for an area variance from the lot area requirements of Subtitle E § 201.4 to allow an additional apartment in an existing 12-unit apartment house in the RF-3 zone at 220 2nd Street, S.E. (Square 762, Lot 8). Following a public hearing, the Board voted to grant the application in October 2017.

b) Discussion on third prong: No substantial detriment or impairment. The Board finds that approval of the requested variance will not result in substantial detriment to the public good or cause any impairment of the zone plan. The Applicant does not propose any enlargement of the existing building but will continue the existing apartment house use with one additional apartment. The Board does not find that the addition of a single one-bedroom apartment within the existing building will have any significant impact on the vicinity of the subject property, including the U.S. Capitol precinct and the adjacent area. The Applicant indicated that certain measures will be undertaken with respect to trash storage and collection in an effort to minimize the potential for adverse impacts especially pertaining to rodents, and the Board adopts those measures as conditions of approval in this order. **The addition of an apartment within the existing building will be consistent with the residential nature of the RF-3 zone, without affecting the principal dwellings and flats in small attached buildings near the subject property.**

5. Case No. 19662 of Demetrios Bizbikis

a) Summary: This application was submitted on October 27, 2017, by Demetrios Bizbikis, the owner of the property that is the subject of the application (the "Applicant"). The Applicant requests a special exception under the residential conversion requirements of Subtitle U § 320.2, and area variances from the lot area per dwelling unit requirements of Subtitle E § 201.4 and Subtitle U § 320.2(d) to permit an existing four-unit apartment house in the RF-1 Zone. Following a public hearing on April 18, 2018, the Board voted to approve the application.

b) Discussion on third prong: The Board also concludes that granting the requested variance would not substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board agrees with OP's finding that the proposal will not impair the zone plan and credits OP's finding that "the potential harm to the regulations (since the zone was and is not intended to be an apartment zone) would need to be evaluated against the long-term nature of the existing use, and the potential harm to the current tenants within the building." **Although the RF-1 Zone does not allow for four-unit apartment houses as a matter of right, the Zoning Regulations do provide the opportunity for the conversion of a residential structure into a multiple dwelling unit apartment use under 11-U DCMR § 320.2. Because this use is permitted by special exception in the zone, provided that certain criteria are met, the Board finds that the allowing the use does not impair the zone plan. Further, the adjacent property is a three-unit apartment house, and the structure on the Subject Property has a similar design to the adjacent building and to nearby buildings**. Accordingly, the Board concludes that the third prong of the variance test has been met.

6. Case No. 20543 of Crystal and Jeffery Cargill:

a) Summary: The Applicants requested special exception relief under Subtitle U § 320.2 to allow the conversion of an existing residential building to an apartment house use and, pursuant to Subtitle X § 1002, for an area variance from the land area requirement of Subtitle U § 320.2.(c) to permit the use of an existing accessory structure as a third dwelling unit in the RF-3 zone at 316 2nd Street, S.E. (Square 763, Lot 21)

b) Discussion on third Prong pp. 8-9: Approval of the requested variance is also consistent with the intent of the RF zones to recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate density housing to the overall housing mix and health of the city.

B. DC Court of Appeals

The DC Court of Appeals discussions on the integrity of the zone plan generally looks to the context of the neighborhood in which it is located.

Specifically, in *Neighbors*, the Court found it was reasonable for the BZA to determine that the variances would not impair the intent of the zone plane because the lot could accommodate the additional density without being crowded. Additionally, it found that there were already taller buildings in the area that were not typical of the height of the zone.[1] The same reasoning applies

[1] Third, again echoing its special exception determinations, the BZA found that the variances will not be detrimental to the public good or the zone plan because the lot is large enough to

here. For both Harvard and A Street, the buildings were constructed before lot occupancy limits were applied, resulting in larger buildings than typical for the RF-1 zone and supporting added density within long-existing structures without exterior expansion and without overcrowding. This is also consistent with the land area density approved in other 900-foot rule cases, noted in the 900-ft. rule case chart attached as an exhibit to this filing.

Because these units are comparatively large, the projects avoid concerns about "micro-units"—the very issue the 900 sq. ft. rule and RF zone regulations, as discussed in ZC Case 14-11, were apparently aimed at preventing (see 900 ft. rule discussion below in III).

In *Oakland Condo*, the BZA concluded that granting relief would not impair the integrity of the zone plan because the rooming house already existed as a nonconforming use and could continue operating with or without the four additional rooms. The Board emphasized that the intent of the regulation—preventing the proliferation of new rooming houses—was not undermined, since this was not a new use but rather one that pre-dated the adoption of the rule. The Court deferred to that reasoning, holding that so long as the BZA had a rational basis, its judgment should be respected.[2]

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accommodate the shelter and the police station along with the accessory uses without overcrowding or violation of applicable lot occupancy and floor area limits or side yard and rear yard requirements; and because there already are buildings of similar or greater height to the north and east of the lot, and the Ward 3 shelter building will be "substantially set back and buffered from adjacent streets and residences and would therefore not overwhelm the nearby lower scale buildings." Neighbors for Responsive Gov't, LLC v. D.C. Bd. of Zoning Adjustment, 195 A.3d 35, 58 (D.C. 2018)

[2] Lastly, with respect to the third and last prong of the three-part variance analysis, petitioner avers that the grant of the use variance impairs the integrity of the zone plan. Petitioner emphasizes that the Office of Planning (OP) recommended denial of the variance, "in part on the ground that it would be inconsistent with the intent of Order 614."7 In petitioner's view, the BZA took a far too narrow construction of the zoning plan in concluding that Order 614 and its corresponding regulations were intended to prevent only new transient uses. When properly understood, petitioner asserts, "it becomes apparent that a dominant theme of the zone plan for residential neighborhoods such as that of which 2005 Columbia Road is a part is, quite specifically, protection from intrusion or expansion of hotels and other commercial facilities for transient guests." At the same time, according to petitioner, the BZA's assessment of the variance's harm to the public good is understated: approval of the variance permits the expansion of a transient facility in the neighborhood by 50% and therefore introduces even more "fleeting commercial customers of a hotel-like business enterprise in the midst ... of a residential neighborhood." We are mindful that "we defer to the BZA's interpretation of the zoning regulations and must uphold that interpretation 'unless it is plainly erroneous or inconsistent with the regulations.'" Georgetown Residents Alliance v. District of Columbia Bd. of Zoning Adjustment, 816 A.2d 41, 45 (D.C.2003). The BZA concluded that the "intent of Z.C. Order No. 614, and now, § 330.6§ 330.6, was/is to control the proliferation of new daily-occupancy rooming houses in the City. The non-proliferation intent of Z.C. Order 614 is not undermined by the continued use of this rooming house because it is not a

The same reasoning applies here. At Harvard, even without the fourth unit, the building remains a purpose-built, three-unit apartment house that pre-dates the zoning regulations. Similarly, at A Street, the existing structure was established long before the regulations and would continue to function as a multi-unit building with or without the relief. In both cases, granting the variance does not create a new use or proliferate conversions; it simply recognizes and legalizes long-existing configurations within buildings that were already designed for multi-family occupancy.

II. VARIANCE TEST APPLIED TO OTHER 900 FOOT RULE CASES

These cases are described in more detail in the September filings and in the case chart attached as an exhibit, generally echoing the sentiment of this being a context-based review for the third prong. These also demonstrate how subject cases largely mirror the same fact patterns in previously approved 900-foot rule cases. This body of evidence, taken as a whole, including the discussion below on the 900-foot rule origins and intent of the RF-1 zone, should provide the Board with enough evidence to approve all three requests. And overall, these cases clearly meet the district's goals to provide high-quality, relatively affordable housing near transit. These cases all have support, from both ANC and OP, which the board is required to give great weight.

Again, the Applicant directs the Board's attention to the discussion of the principle of *stare decisis*, addressed in greater detail in the September filings and reiterated below. This principle further supports the Board's authority to approve the pending cases—or, at a minimum, cautions against denial—given that the cited Court of Appeals decision reversed the Board's prior ruling on the grounds that it violated *stare decisis*.

In light of the substantial evidence supporting the requested variances, the clear public and policy benefits of approval, the consistency of these fact patterns with prior approvals, and the absence of any opposition or potential appellant, there is no sound basis for denial under the current fact patterns and previous fact patterns for other 900 ft. rule cases when applying principles of administrative consistency. Accordingly, the Applicant respectfully requests that the Board approve these cases.

III. 900 FT. RULE

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new use, but pre-dates Z.C. Order No. 614, and is entitled to operate as a nonconforming use with or without the variance for the four 'extra' rooms." "We owe deference to that interpretation, and 'may not substitute [our] own judgment [for that of the BZA] so long as there is a rational basis for the BZA's decision.'" Rodgers Bros. Custodial Servs., supra, 846 A.2d at 317. Moreover, the BZA reasonably and convincingly found—based on witnesses' testimony—that "there will be little difference between the external traffic" and noise "produced by 12 rooms and those produced by eight."8 We are equally satisfied with the BZA's careful and detailed treatment of the objections raised by the OP and ANC, at pp. 17–20 of its order. Oakland Condo. v. D.C. Bd. of Zoning Adjustment, 22 A.3d 748, 757 (D.C. 2011)

In Zoning Case 14-11, the 900 sq. ft. rule was not newly adopted but rather discussed at length; in fact, it is likely the most robust record of the rule's purpose in relation to the purpose of the RF zones, since there is no available legislative history from its original adoption. The discussion in 14-11 focused on reinforcing the intent of the RF zones—specifically, preventing mid-block conversions and large additions that would undermine the character of the rowhouse neighborhoods. Purpose-built apartment buildings were not the subject of that dialogue; instead, the concern was that combining multiple rowhouse lots could create oversized multi-unit buildings, effectively turning RF-1 areas into de facto apartment zones. Other concerns related to speculative overbuilding. This was over a decade ago, in 2014 and 2015.

By contrast, the subject property is a purpose-built apartment building, consistent with its adjacent structures and denser, mixed-use neighborhood near transit. The request involves only four units (Harvard), or an additional two units in VACANT space which cannot be put to any other use. This is well within the scale contemplated by the RF-1 changes, and while IZ is not required here, the pricing of the proposed units is consistent with pricing for IZ units, making them affordable. As such, the proposal both preserves the building's original form while providing quality affordable housing near transit, meeting the intent of the regulations. There is a more robust discussion on this in the September filings in the respective records.

IV. STARE DECISIS

Each zoning case before the Board of Zoning Adjustment (BZA) must be evaluated based on the specific facts and circumstances presented. However, this does not mean the Board operates without constraint or discretion. While binding precedent may not apply in the same manner as it does to courts of law, the legal doctrine of stare decisis and principles of administrative consistency clearly govern the Board's actions.

Stare decisis is a legal doctrine requiring courts—and by extension, administrative bodies—to follow established interpretations when applying legal standards to similar facts. Derived from the Latin phrase "to stand by things decided," stare decisis promotes consistency, predictability, and stability in the legal system by ensuring that decision-makers apply the same rules to similarly situated parties. It is particularly important in land use and zoning matters, where regulatory certainty is essential for orderly development and due process protections.

Although the BZA is not a court and its prior decisions do not create binding precedent, the standards it applies must remain consistent over time, unless a clear and reasoned justification is provided for a change. In other words, while the facts of each case may differ, the legal principles used to evaluate those facts must remain constant. Abrupt or unexplained departures from settled Board practice not only undermine fairness but also violate foundational norms of administrative law.

The District of Columbia Court of Appeals has squarely addressed this issue. In Smith v. District of Columbia Board of Zoning Adjustment, 342 A.2d 356 (D.C. 1975), the Court reversed the Board's decision to invalidate a zoning permit based on a sudden reinterpretation of the Zoning Regulations. Petitioners in Smith had relied in good faith on a long-standing interpretation consistently applied by both the Zoning Administrator and the Board itself. The Court held that any departure from such an interpretation must be made prospectively and accompanied by reasoned findings. As the Court explained:

"The Board made no findings relevant to petitioners' claim that the Zoning Administrator's approval of the deck was given pursuant to a long-standing interpretation of the Zoning Regulations… so that established principles of stare decisis require any change in that interpretation to be made prospective only. While the Board is of course not bound for all time by its prior positions, it should have considered this contention..."

(Smith v. BZA, 342 A.2d at 359) (emphasis added)

This language is critical. **It confirms that the Board may evolve its interpretations, but only in a transparent and equitable manner—and never as a basis to retroactively deny relief in a case that mirrors prior approvals**. Over the last 10 years or so, the BZA has granted relief from the 900 square foot rule in a dozen or so cases involving either inherited conversions or minor unit additions to existing apartment buildings. These approvals were based on a consistent reading of the Zoning Regulations, supported by the legislative record of ZC Case No. 14-11, and informed by case-specific factors like neighborhood character, building form, and historic use. If the Board now wishes to depart from this approach, it must do so prospectively and with a fully articulated legal rationale, not by retroactively denying relief in factually similar cases.

In sum, while no applicant is entitled to automatic approval based on past cases, they are entitled to be evaluated under the same legal standards. Stare decisis ensures that the rules do not change midstream, and that like cases are treated alike. That principle applies no less in administrative zoning practice than it does in the courtroom.