DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's Statement of 400 Seward Square, LLC
400 Seward Square, SE (Square 0819, Lot 0028)

I. INTRODUCTION.

This Statement is submitted on behalf of 400 Seward Square, LLC (the "**Applicant**"), owner of the property located at 400 Seward Square, SE (Square 0819, Lot 0028) (the "**Property**"). The Property is zoned RF-1/CAP and is improved with an existing, purpose-built apartment building (the "**Building**") with a certificate of occupancy for 14 residential units. The Building is currently configured with 15 residential units and the Applicant proposes adding 2 additional units in the existing cellar space.

Subtitle U § 301.5(b) provides that a purpose-built apartment house built prior to 1958 may renovate or expand, provided that there is 900 square feet of lot area per dwelling unit. The Property consists of 3,445 square feet of lot area and therefore, the Applicant requests area variance relief to legalize the 15th unit and to add 2 additional units to the cellar space for a total of 17 residential units.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the relief requested pursuant to X-1002.

III. BACKGROUND.

A. Description of the Property and Surrounding Area

The Property is a corner lot comprised of 3,445 square feet of land area, located in the Capitol Hill Historic District. It is improved with a four-story + cellar purpose-built apartment building, constructed in 1905. Abutting the Property to the north is 222 4th Street, SE, an apartment building. Abutting the Property to the east at 404 Seward Square, SE, is a single-family row dwelling. Abutting the Property to the south is Seward Square and Pennsylvania Avenue and to the west is 4th Street, SE. The area is characterized by a mix of large condo and apartment buildings, flats, and single-family dwellings. Along Pennsylvania Avenue, there are several commercial uses such as restaurants, a gas station, a liquor store, banks, coffee shops, hotels, etc. The Property is also located less than 500 feet from the D10 bus route and an 8-minute walk from the Capitol South metro station, with a WalkScore of 95 – 'Walker's Paradise'.

B. History & Proposed Project.

The Applicant previously obtained approval from the Board of Zoning Adjustment for substantially the same project in 2020 (BZA Case No. 20289). The Board approved the application at its November 4, 2020, public hearing by a vote of 4-0, and the written order was issued on November 18, 2020. The approved project authorized variance relief from Subtitle E § 201.7, which is now updated and recodified as Subtitle U § 301.5(b)) to permit the legalization of an existing fifteenth dwelling unit and the creation of two additional dwelling units within underutilized cellar space, for a total of seventeen dwelling units within the Building. Following the Board's approval, the Applicant obtained permits for the project; however, the permits subsequently expired due to architect error, before the approved work was completed, and the prior approval has since lapsed. The Applicant now seeks reapproval of the same relief previously granted by the Board. Notably, the underlying property conditions and circumstances supporting the Board's prior approval remain unchanged.

IV. AREA VARIANCE.

The burden of proof for an area variance is well established. The Board of Zoning Adjustment may grant an area variance if it finds that "(1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan." Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment, No. 16-AA-932, 2018 WL 1748313, at *2 (D.C. Apr. 12, 2018); Ait–Ghezala v. District of Columbia Bd. of Zoning Adjustment, 148 A.3d 1211, 1216 (D.C. 2016) (quoting Washington Canoe Club v. District of Columbia Zoning Comm'n, 889 A.2d 995, 1000 (D.C. 2005)) (internal quotation marks omitted). As set forth below, the Applicant meets the three-part test for the requested variance relief.

A. Extraordinary or Exceptional Condition Affecting the Subject Property.

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adjustment, 320 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land; and that "…property generally includes the permanent structures existing on the land." Id. at 293–94. The Court held that the exceptional situation standard of the variance test may be met where the required hardship is inherent in the improvements on the land (i.e., the building or structure) and not just the land itself.

Here, the Property is improved with a purpose-built apartment building originally constructed in 1905, decades prior to the adoption of the current Zoning Regulations and the lot area per dwelling unit requirements applicable to apartment houses in the RF-1/CAP Zone. The Building therefore reflects an older development pattern and layout that cannot reasonably conform to modern density standards without substantial alteration to the existing structure and residential configuration. As the Office of Planning confirmed in its October 9, 2020, report recommending approval, the Building is an existing nonconforming structure that predates the 1958 Zoning Regulations and is appropriately treated as an exceptional condition for purposes of the variance standard.

The Building also contains a longstanding fifteenth dwelling unit that has existed for decades despite prior Certificates of Occupancy reflecting only fourteen units. The Applicant's review of historical Certificates of Occupancy indicates that this discrepancy has existed since at least the 1970s and predates the current ownership of the Property.

In addition, the cellar level contains substantial underutilized space adjacent to existing residential units. Due to the Building's original design, existing stair configuration, structural walls, utility layout, and the configuration of adjacent units, the space cannot reasonably be incorporated into existing units or otherwise devoted to a meaningful permitted use without significant structural intervention and disruption to existing residents. As the Office of Planning noted in its 2020 report, existing unit B2 is separated from the subject space by a load-bearing wall, and units B1 and B3 are separated from the subject space by the Building's stairwell—making structural consolidation costly, inefficient, and disruptive. Furthermore, the vacant cellar space has already given rise to documented security incidents, including an instance in which an unauthorized individual gained entry to the Building and remained in the vacant space overnight. These conditions further underscore that the space cannot safely or practically remain in its current unused state.

B. <u>Strict Application of the Zoning Regulations Would Result in Practical Difficulties to the Applicant.</u>

Strict application of Subtitle U § 301.5(b) would result in practical difficulties to the Applicant. As recognized in *Palmer v. District of Columbia Board of Zoning Adjustment*, 287 A.2d 535 (D.C.

1972), the variance process exists in part to prevent otherwise usable portions of a property from remaining unnecessarily idle and to alleviate unnecessarily burdensome applications of the Zoning Regulations.

Without the relief, the Applicant would be unable to reasonably utilize substantial portions of the cellar level despite the Building's longstanding use as a multi-unit apartment house. The subject space has remained underutilized and is not needed for ancillary building functions, as the existing units already contain adequate storage and in-unit laundry facilities. The requested relief would instead permit the adaptive reuse of existing interior space for residential use already permitted within the RF-1/CAP Zone.

The Applicant also explored alternatives to the requested relief, including incorporating the cellar space into adjacent units. However, such modifications would require substantial structural alterations, including modifications to load-bearing walls and relocation of the Building's stairwell, and would necessitate significant disruption to occupied dwelling units. As the Office of Planning concluded in its 2020 report, even if such alterations were financially or structurally feasible, the resulting floor plan would create units inconsistent in size and configuration with the existing units in the Building—and incorporating the space into upper-floor units would require additional circulation that would reduce the functionality of those units. These alterations would be costly, inefficient, and impractical.

Strict application of the Zoning Regulations would also require elimination of the longstanding fifteenth dwelling unit that has existed in the Building for decades. The practical difficulty associated with this condition was not created by the current owner but instead arises from the historic configuration and longstanding operation of the Building.

C. <u>Relief Can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan</u>

Granting the requested variance relief will not result in substantial detriment to the public good. The application involves the continued residential use of an existing purpose-built apartment building and does not involve any expansion of the Building's footprint or height. The proposed units will be located entirely within existing interior space. The requested relief will also permit the legalization of a longstanding dwelling unit and the productive reuse of underutilized cellar space that is currently vacant and a demonstrated security risk to existing tenants. The Office of Planning has previously recommended approval of this relief, noting that "additional residential density is appropriate" in this mixed-use, transit-accessible neighborhood, and that the proposed units would not require additional excavation or exterior modification.

Granting the requested relief will not substantially impair the intent, purpose, or integrity of the Zoning Regulations or the RF-1/CAP Zone. Residential apartment use is specifically contemplated within the RF-1 Zone, and the requested relief is limited in scope and tailored to the unique conditions of this historic apartment building. The proposal is consistent with the existing multifamily character of the surrounding neighborhood and represents an appropriate adaptive reuse of existing building area. Notably, the Board previously approved the same relief by a unanimous vote of 4-0 after a full public hearing at which the Office of Planning, DDOT, ANC 6B, and the adjacent neighbor all expressed support. The circumstances underlying that approval remain materially unchanged, and there is no basis to reach a different result on this refiling.

Moreover, the Board previously approved substantially the same relief for the subject Property, finding that the application satisfied the variance standards under Subtitle X § 1002. The circumstances underlying that approval remain materially unchanged.

V. CONCLUSION.

For the reasons outlined in this Applicant's Statement, the Applicant respectfully requests the relief as detailed above.

Respectfully Submitted,

Alexandra Wilson

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