LAW OFFICES
GRIFFIN, FARMER & MURPHY, LLP
1912 SUNDERLAND PLACE, N.W.
WASHINGTON, D.C. 20036-1608

TELEPHONE: (202) 429-9000
(800) 429-9003

FACSIMILE: (202) 232-7365
(202) 331-3803

WRITER'S DIRECT DIAL: (202) 530-7153

WRITER'S DIRECT EMAIL: jfarmer@washlaw.com

MARK G. GRIFFIN (DC, MD)
JONATHAN L. FARMER (DC, MI)
BRIAN P. MURPHY (DC, MD)
DAVID K. McRAE (DC, MD)
JAMES T. HEISE (DC, MD)
ANTHONY D. LaBRASCA (VA)

OF COUNSEL
DALE L. JERNBERG (DC, MD)
PAUL M. GRIFFIN (DC, NJ)

3218 EASTERN AVENUE
BALTIMORE, MD 21224

703 GIDDINGS AVENUE
SUITE U6
ANNAPOLIS, MARYLAND 21401

6305 IVY LANE
SUITE 504
CAPITAL OFFICE PARK
GREENBELT, MARYLAND 20770

11860 SUNRISE VALLEY DRIVE
SUITE 101
RESTON, VIRGINIA 22046

November 26, 2002

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D.C. OFFICE OF ZONING
2002 NOV 27 AM 11:23

HAND DELIVERY

Alberto Bastida
D.C. Zoning Commission
Room 200
441 Fourth Street, N.W.
Washington, DC 20001

Re: Zoning Commission Case No. 02-37/16869
Sua Sponte Review

Dear Alberto:

Pursuant to your previous letter, I am submitting the following statement on behalf of King's Creek, LLC for Zoning Commission consideration.

Please call me if you have any questions or issues.

Sincerely,

GRIFFIN, FARMER & MURPHY, LLP

By: _____
Jonathan L. Farmer

Enclosure

ZONING COMMISSION
District of Columbia
Case 02-37
Exhibit 5

ZONING COMMISSION
District of Columbia
CASE NO.02-37
EXHIBIT NO.5

BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA

In Re King's Creek LLC	)	**Z.C. Case No. 02-37/16869**
	)	**Sua Sponte Review**

STATEMENT OF KING'S CREEK LLC

Pursuant to 11 DCMR § 3128, the Zoning Commission has decided to conduct a sua sponte review of BZA Application No. 16869. King's Creek LLC hereby submits the following statement pursuant to the Commission's request and requests that the previously issued order of the Board of Zoning Adjustment be affirmed.

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FACTS

King's Creek LLC filed a self certified application to the BZA, pursuant to 11 DCMR § 3103.2 for variances from floor area ratio, lot occupancy requirements, and non-conforming structure provisions and a special exception to construct an addition to an existing building for mixed use development of premises 2329 Champlain Street, N.W., in an R-5-B Zoning District. Prior to submission of the application, inquiry was made to the Zoning Office and the Zoning Administrator to determine whether the site was within the confines of the Reed-Cooke Overlay. The Zoning Map had been changed to include the subject site within the Reed-

Cooke Overlay and both offices confirmed that the map covered the subject site. At its initial meeting on June 4, 2002, the BZA approved the requested variances and special exception by a 4-1 vote. However, it was subsequently determined that the site was not included within Reed-Cooke Overlay and that a height variance would be required instead of a special exception. The BZA reopened the record and reconsidered its decision to grant the requested height. The BZA granted the request for a height variance by a vote of 4-0-1 with one member not present, not voting. King's Creek has previously submitted statements, exhibits, testimony and memoranda in the record of this case and that are hereby incorporated by reference in this current statement.

ARGUMENT

I. The Board of Zoning Adjustment Has Not Exceeded It's Perogative And The Underlying Zoning Remains Unchanged.

The fundamental issue before this Commission is whether the BZA exceeded its authority in granting variances to allow the requested increases in height, FAR, lot occupancy and to construct an addition to a non-conforming structure.

As stated in the Order, the BZA is authorized to grant variances where "by reason of exceptional narrowness, shallowness, or shape of a specific property . . .

or by reason of exceptional topographical conditions or other extraordinary or exceptional situations or conditions" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties . . ." D.C. Code § 6-641.07(g)(3), 11 DCMR § 3103.2. Area variances, such as sought in this matter, require a finding of practical difficulty by the Board. *Palmer vs. Board of Zoning Adjustment* 287 A.2d 535 (D.C. App. 1972).

The "practical difficulties" inherent in the development of this property are well established. The site is occupied by an architecturally significant and unique structure which, while not designated a landmark, is a recognized feature of the neighborhood because of its aesthetic appeal. Both the ANC and the Office of Planning, in their respective reports, note the community appeal of the structure and the importance of its preservation. Indeed, the uniqueness of the structure adds to the architectural variety of a neighborhood that is celebrated for its eclectic nature. The BZA has, in similar cases, found that a practical difficulty can be established in the development of a specific building of a historical nature at unique a location. The BZA has taken notice of the design limitations imposed by existing buildings of architectural or historic significance. *See* BZA Case Nos. 16116 (June 5, 1996) and 16131 (February 3, 1997). The Board has specifically found that when applicants demonstrated their intent to preserve architecturally significant or unique buildings it

could determine that practical difficulties were present and that a variance could be granted. In the present case, the existing structure is one of the few intact examples of the early automotive garage types built in the early twentieth century. Findings of practical difficulty and uniqueness are not limited to those situations in which a designated landmark structure is present or to sites located in historic districts. There is no specific requirement in the zoning regulations that limits findings of practical difficulty to those situations involving designated historic structures.

Further, the Zoning Commission should consider the fact that the existing structure occupies over 97% of the lot and, because of this non-conformity, a variance would be required before any redevelopment of the site could occur. Any reconstruction on the site as a matter of right would require demolition of a significant portion or the whole of the structure in order to meet basic lot occupancy requirements. Demolition of the unique, significant structure is not desirable because of the structure's value to the community at large.

The zoning regulations do not provide a specific limitations on the magnitude of variances. Rather, the Board of Zoning Adjustment is empowered to grant variances within the limitations of D.C. Code § 5-424(g)(3) and 11 DCMR § 3103. In the instant case, the BZA duly considered light, air, topography and the sites relationship to other structures in near proximity. Additional consideration was

given to the approvals of both the Advisory Neighborhood Commission, the Office of Planning. The BZA considered all tendered evidence of community support as well as the fact that there was no community opposition to the project. Clearly, the Board did not abuse its discretion insofar as it simply approved the proposal in the form that had already been reviewed by other elements of the government and the community.

The BZA also considered the effect that the proposed project would have on the immediate neighborhood. It found that the site was unique because it was surrounded by structures that created a detrimental canyon effect on the street facing the project. The Zoning Commission had intended that the Reed-Cooke Overlay protect the immediate neighborhood from adverse environmental effects created by new development. The BZA's approval of the proposed project supported the Commission's stated policy by allowing a building to be constructed that provided the additional air and light necessary to mitigate potential adverse effects. The Board recognized that the deprivation of light and air was a practical difficulty and that King's Creek could only overcome this difficulty by extending the building upwards and adding significant setbacks. The Board found that it was appropriate to allow King's Creek to exceed allowable FAR and height limits in this instance.

The BZA did not exceed its authority or otherwise ignore any express limits

contained in the zoning regulations. The BZA exercised the appropriate discretion in allowing the increased FAR and height to avoid the potential adverse environmental effects of increased development.

II. The BZA's Action Did Not Violate Any Express Policy of The Zoning Commission

The BZA found that the circumstances of this case presented an "exceptional situation" and that strict application of the zoning regulations would result in practical difficulties for the developer of the property. Moreover, the Board determined that the proposed project would not be detrimental to the public good. The height and density of the proposed project, as demonstrated in the record, is compatible with the heights and densities of other buildings and developments in the immediate area. The Zoning Commission's policies as expressed through the zoning regulations and the Commission's orders have not been violated. The BZA, after review of the record, found no evidence that the proposed project would in any way impair the "intent, purpose, and integrity of the zone plan" as expressed in the zoning regulations or the map. The Board expressly found that the King's Creek proposal met the stated purposes of the Reed-Cooke Overlay by providing additional housing and retaining a desirable compatible commercial business in the

neighborhood. The R-5-B Zoning District is intended to "permit a flexibility of design" 11 DCMR § 350.1, and contains numerous structures of similar size and scale. The additional height afforded the project by the BZA simply enhances the beneficial effects that the proposed project will have on the immediate neighborhood. The Zoning Commission, through the Reed-Cooke Overlay, 11 DCMR § 1401, has expressed its desire to maintain the existing housing and compatible businesses in the area while providing for additional housing opportunities. The proposed King's Creek project achieves all of these objectives without detriment to any policy expressed by the Zoning Commission. The 50 foot height limit embodied in the regulations for the R-5-B zoning district sets a threshold for consideration of the appropriateness of a particular project in a particular context. A request for a variance from this requirement was duly considered by the Board of Zoning Adjustment in a manner that respected the integrity of the zoning regulations and was truly appropriate for the site. The Board's consideration of height and FAR increases for the project clearly included consideration of the Zoning Commission's policies as expressed in the zoning regulations and map.

CONCLUSION

For the reasons expressed in the foregoing statement and the record in this case, the BZA order in Case No. 16869 should be affirmed.

Respectfully submitted,

GRIFFIN, FARMER & MURPHY, LLP

By: _____
Jonathan L. Farmer
On Behalf of King's Creek, LLC