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January 26, 2016

VIA IZIS AND HAND DELIVERY

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N.W., Suite 200S
Washington, DC 20001

**Re: BZA Case No. 19127
Post-hearing Submission
2800 Sherman Avenue, NW (Square 2857, Lot 818) (the "Site")**

Dear Members of the Board:

On behalf of 2800 Sherman, LLC (the "Applicant"), we hereby submit the following additional information, as requested by the Board of Zoning Adjustment (the "Board" or "BZA") at the conclusion of the public hearing on December 8, 2015.

1. Updated Architectural Plans and Elevations and Zoning Calculations

The Applicant originally proposed to subdivide the Site into 11 new record lots and to construct one flat (two units) on each new lot, for a total of 22 units. Except as noted below, the units would be two-bedroom units. Six of the new lots were proposed to have frontage on Girard Street and five of the new lots were proposed to have frontage on Sherman Avenue. The project included 15 surface parking spaces accessed from the public alley and two centralized trash areas. The Applicant agreed with the Advisory Neighborhood Commission ("ANC") that both units in one of the flats would be set aside as three-bedroom Inclusionary Zoning ("IZ") units reserved for eligible low-income households, whereas Chapter 26 of the Zoning Regulations only requires one low-income unit and one moderate-income unit. The footprint of the IZ flat fronting on Sherman Avenue would be slightly larger than the other flats, in order to meet the IZ gross floor area requirement. The ANC filed a report in this case, in unanimous support of the application.

The originally-proposed project resulted in the need for area variances from 11 DCMR §§ 401.3 (lot area and width), 403.2 (lot occupancy), 404.1 (rear yard), and 2115.2 (compact parking spaces), and special exception approval under 11 DCMR §§ 2604.3 (IZ lot width) and 2116.5 (location of parking spaces). At the public hearing, the Board requested that the Applicant provide a plan showing the proposed development with one record lot eliminated. The

Board of Zoning Adjustment
District of Columbia
CASE NO.19127
EXHIBIT NO.39

Applicant restudied the project in response to the Board's request, and has developed a revised site plan with 10 lots instead of 11 (20 units instead of 22 units), as shown on Sheet 5 of the revised architectural plans and elevations attached as Exhibit A. The revised zoning calculations for each of the lots are included as Exhibit B.

The total area of the irregularly-shaped Site is 13,900 square feet. Pursuant to the IZ lot area minimum of 1500 square feet in the R-4 zone, 9.26 lots would be permitted on the Site. The new site plan has 10 lots. The size and irregular configuration of the site still result in the need for variance and special exception relief for the development, but the degree of relief has been reduced, and in one instance, eliminated. The challenges of maximizing the lot orientation toward Sherman Avenue; minimizing the rear yard gap along Girard Street; maintaining the height, width, design, rhythm and overall size of buildings in a manner consistent with the character of the surrounding residential neighborhood; providing adequate on-site parking and trash storage; eliminating the need for curb cuts along the streets; and remediating the extensive hydrocarbon infiltration in the soil from the years of previous commercial/industrial use of the Site, all remain as practical difficulties facing the Applicant in this development.

The total gross floor area of the project has been reduced from 30,044 square feet to 28,599 square feet. As a result of eliminating one flat fronting on Sherman Avenue, and reconfiguring the site plan, all of the flats in the development have become wider and less deep, resulting in a more functionally efficient interior living area that is more consistent with market demand. A lot width variance is no longer required, and the lot widths on Girard Street now exceed the minimum lot width allowed by special exception for IZ developments. The four lots fronting Sherman Avenue each have a new lot width of 18'-9" (previously 15'), and the six lots fronting Girard Street each have a new lot width of at least 17' (previously 16'). The average lot area has increased from 1,265 square feet to 1,390 square feet, thus reducing the extent of the lot area variance previously requested. The average lot occupancy has decreased from 54% to 49%. The extent of the lot occupancy variance previously requested for the lots fronting on Sherman Avenue has also been reduced. The average rear yard depth has increased significantly from 19'-2" to 29'-3."

The Applicant has preserved the building heights at 37 feet, and has maintained the same on-site parking layout with 15 compact spaces. Both the upper and lower units in each flat now have rear access in addition to street access. The Applicant has removed one of the two proposed trash areas after further consultation with a trash contractor, and there is now one trash area in the center of the Site with larger bins/dumpsters for trash and recycling than previously proposed. The Applicant will continue to provide one flat for two large, three-bedroom IZ units dedicated to eligible low-income households. The flat containing the IZ units is now located on Girard Street (Lot B) instead of on Sherman Avenue. The footprint of the flat on Lot B is slightly larger than the other flats in order to meet the IZ gross floor area requirement.

The Applicant believes that the revised plan addresses the Board's and the neighbor's concerns regarding density, access, and compatibility with the surrounding area. The specific computations regarding the variance and special exception relief requested are set forth in **Figure 1**, below.

Figure 1:

	Required	Proposed in Original Application	Proposed in Revised Application	Effect on Zoning Relief Requested
Lot Width (§ 401.3) and IZ Lot Width (§ 2604.3)	18' and 16' by special exception per IZ	16'-1" average. Variance required for 5 lots fronting Sherman (15' wide each); Special exception for 6 lots fronting Girard (16' wide each).	17'-10" average. No variance required for 4 lots fronting Sherman (18'-9" wide each); Special exception required for 5 of the 6 lots fronting Girard (17' or 17'-1" wide each).	Complete removal of variance request. Degree of special exception reduced by 50% for 5 of the 6 lots fronting Girard (Lots A and C-F). Lot B needs no special exception approval.
Lot Area (§ 401.3) and IZ Lot Area (§ 2604.3)	1,800 sf and 1,500 sf per IZ	1,265 sf average. Variance required for 5 lots fronting Sherman (885 sf each) and 3 of the 6 lots fronting Girard (1,200 sf each).	1,390 sf average. Variance required for 4 lots fronting Sherman (994 sf each) and 3 lots (Lots D, E, and F) fronting Girard (1,275 sf each).	Degree of lot area variance reduced by 17.7% (Sherman lots) and 25% (Girard lots)
Lot Occupancy (§403.2)	60%	54% average. Variance required for 5 units fronting Sherman (70%-85% each).	49% average. Variance required for 4 lots fronting Sherman (70% each).	Degree of lot occupancy variance reduced by up to 25%.
Rear Yard (§ 404.1)	20'	19'-2" average. Variance required for 5 lots fronting Sherman (17' to 18' each, 11' for IZ flat) (average rear yard for lots fronting Sherman 15.3').	29'-3" average. Variance required for 4 lots fronting Sherman (16' each).	Average rear yard on Sherman lots increased from 15.3' to 16'.
Compact Parking Spaces (§2115.2)	Zero compact parking spaces permitted.	15 compact parking spaces provided. Variance requested.	No Change.	No Change.
Parking on a Lot Other than Principal Use Lot (§ 2116.5)	Required.	Parking located in one central area with cross easements. Special exception requested.	No Change.	No Change.

In addition to the variances and special exception relief listed in Figure 1 above, the Applicant also requested a special exception from 11 DCMR § 411.5 of the new penthouse regulations (Z.C. Case No. 14-13), should the new regulations become final prior to the Board's decision on this case. Section 411.5 of the new regulations permits a penthouse on the roof of a flat only upon special exception approval by the Board, provided that the penthouse (a) is no more than 10 feet in height and contains no more than one story; and (b) contains only stair or elevator access to the roof and a maximum of 30 square feet of storage space ancillary to a rooftop deck.

The new penthouse regulations became final upon their publication in the *DC Register* on January 8, 2016. Thus, the Applicant continues to request relief from new 11 DCMR § 411.5 in order to permit a penthouse on the roof of the proposed flats. The Applicant's written support for the relief is detailed on Sheets 11-12 of its Prehearing Statement, submitted to the record at Exhibit 32. None of the penthouses will exceed 10 feet and one story in height, and all of the penthouses will meet or exceed the setback requirements. The penthouses will contain only stair access to the roofs and will not contain any storage space ancillary to the adjoining rooftop decks. Moreover, the Applicant has revised the penthouse plan from the original submission, such that the penthouses are smaller in size and take up less floor area on the roof.

2. Response to Encroachment and Easement Issues

During the public hearing, two neighbors to the north and east of the Site (Mr. Jackson, who owns Lot 45, and Mr. Donaldson, who owns Lots 137 and 820) testified that the proposed development would encroach on their properties, and that they were previously granted an easement by a prior owner of the Site for access across the Site from the rear of their properties out to the north-south public alley that abuts the west side of the Site. The Applicant has further researched this issue and offers the following information:

- To address the encroachment issue, the Applicant commissioned a Survey to Mark to confirm the actual recorded boundaries of Lot 818 in Square 2857. Sheet 4 of the attached Exhibit A is the Survey to Mark, which has been stamped and sealed by the Office of the Surveyor, DC, and by Daniel Caywood of Maddox Engineers and Surveyors. Mr. Caywood has been a Registered Land Surveyor in the District of Columbia for 20 years. In relevant part, the Survey to Mark confirms that Lot 818 extends for a width of 35 feet east of the north-south alley that abuts the west side of Lot 818.
- Sheet 2 of Exhibit A shows the Site in red. This is from the Baist Atlas Plats, which were last updated in the 1960s, and which are also available in the Office of Zoning. At that time, the Site was known as Lots 800, 808 and 816. The Baist Atlas Plat shows a small landlocked public alley (the "Small Public Alley") to the east of former Lot 816 and to the west of Lots 136, 137 (Mr. Donaldson's lot) and 138, and abutting Lot 45 (Mr. Jackson's lot). The Small Public Alley also abutted Lot 815, which is directly to the north of the Site.

- Lots 136, 137 and 138, and the Small Public Alley, were established by a subdivision recorded in the Office of the Surveyor in 1915. See Exhibit C, Subdivision Plat for Lots 136-138. That plat shows that the three lots extended for a depth of 105 feet west of Sherman Avenue, and that the public alley was another 15 feet in width.
- Lot 45 was established by a subdivision recorded in the Office of the Surveyor in 1902. See Exhibit D, Subdivision Plat for Lot 45. That plat shows that Lot 45 extended for a depth of 120 ft. west of Sherman Avenue.
- The Survey to Mark (Exhibit A, Sheet 4) shows that the distance from Sherman Avenue west to the north-south public alley measures 155 feet. The depth of Lot 45 (120 feet), and the depths of Lots 136, 137 and 138 (105 feet) (together with the 15 foot width of the Small Public Alley), when combined with the width of the portion of Lot 818 that abuts that property (35 feet), adds up to 155 feet. There is no other intervening land between Sherman Avenue and the north-south public alley at this point.
- The Small Public Alley was closed by action of the Council of the District of Columbia in DC Law 14-263, dated March 27, 2003. The Alley Closing Plat was recorded on August 1, 2003. The application for the alley closing (known as Application No. SO 02-1463) was filed in 2002 by the record owners of Lots 136, 137 and 138. The ownership of the closed alley reverted to the record owners of Lots 136, 137 and 138 upon recordation of the alley closing plat in 2003. See Exhibit E, Alley Closing Plat, and Exhibit F, Alley Closing Legislation.
- The Office of Tax and Revenue assigned tax lot numbers to those three reversionary properties on May 18, 2004. See Exhibit G, Assessment and Taxation Plat 3812-S. The lots that reverted to the owners of Lots 136, 137 and 138 became known, respectively, as Lots 819, 820 and 821.
- In 2006, the owner of Lots 138 and 821 combined their two lots into one lot, now identified as Lot 822. See Exhibit H, Assessment and Taxation Plat 3827-K. The other two owners (including Mr. Donaldson) have not yet combined their lots, according to the records of the Office of Tax and Revenue, and therefore those two owners each receive two separate tax bills for their two properties. Thus, Lots 136 and 819 are owned by the same person (Theresa Banks), and Lots 137 and 820 are owned by the same person (Levon Donaldson, who testified at the public hearing). See Exhibit I, Property Ownership List from OTR website.
- To address the easement issue, the Applicant has commissioned its title company to research the records of the DC Recorder of Deeds, to see if there exists any record of a recorded easement granted to Mr. Jackson and/or Mr. Donaldson for access from their properties, across Lot 818 (or the predecessor Lots 800, 808 and 816), to the north-south public alley. Exhibit J is an abstract of the recorded documents on file with the D.C. Recorder of Deeds. This compilation is the result of searches in the Recorder of Deeds files using the following criteria: Lot 818; Lots 800, 808 and 816; Lot 45; Lot 137; Levon Donaldson; Willie Jackson; Earnest Smith; Rosa Lee Smith; Sandra Foote; and finally,

Square 2857. There is no record of any recorded easements affecting either the Site or the Jackson or Donaldson properties. The formal report of the title company is expected to be available prior to the date of the further hearing in this case and will be furnished at that time.

- The survey at Exhibit A, Sheet 3 shows the existence of a long brick and block garage building (outlined in orange) extending for the full length of the western part of Lot 818, from Girard Street northward, extending onto and including Lot 815, to the north of Lot 818. This physical barrier between Lot 818 and the properties of Mr. Jackson and Mr. Donaldson has existed for many years, long before the Applicant purchased the Site.

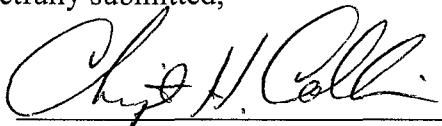
Based on the above information, the proposed development on Lot 818 that is shown on the plans at Exhibit A will not encroach onto the property of either Mr. Jackson or Mr. Donaldson. Moreover, there is no recorded easement for the benefit of either Mr. Jackson or Mr. Donaldson across any part of Lot 818, to allow them to occupy any portion of Lot 818, or to provide access across Lot 818 to the north-south public alley. The long-standing presence of a brick and block garage structure along the entirety of the Applicant's property abutting that alley, which predates the Applicant's ownership of the Site by many years, physically precludes alley access from the Jackson or Donaldson properties. The Applicant has had further discussions with both Mr. Jackson and Mr. Donaldson subsequent to the public hearing about the Applicant's findings on their easement and encroachment issues, and is prepared to review and respond to any substantive information that they provide to the contrary.

The Applicant is currently in discussions to acquire several abutting lots north of Lot 818, along the alley, including Lot 813. The Applicant is also prepared to discuss possible alley access for Mr. Jackson and Mr. Donaldson across Lot 813, if and when the Applicant is successful in acquiring it. Alley access across Lot 818 is not practicable, given the severely constrained site and the parking plan for the Applicant's development.

3. Conclusion

The Applicant believes that the revised project, which incorporates 10 lots (20 units), instead of the previous-proposal for 11 lots (22 units) adequately address the issues raised by the Board. The Applicant also believes that the easement and encroachment issues raised at the public hearing have been adequately addressed. We look forward to the Board's further review of this case at the limited public hearing on February 2, 2016, and respectfully request that the Board grant this application. Thank you.

Respectfully submitted,

By: 
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By: _____
Jessica Bloomfield, Esq.

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Enclosures

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