BEFORE THE
BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of Timothy and Charlotte Lawrence, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10 for variance and special exception relief to construct a garage structure on an alley lot in the RF-1 zone at 1665 Harvard Street N.W. (Rear). (Square 2588, Lot 827).	Application No. 19629

SUPPLEMENTAL STATEMENT OF
VICTOR TINEO AND LAUREN YAMAGATA

This memorandum will respond to certain legal points in the supplemental statement filed by the applicants on March 14, 2018 (the "Statement").

1. The applicants' Statement places emphasis on the fact that the applicants seek an area variance, not a use variance. They argue against what they term an "absolute prohibition against improving the property with any reasonable structure." Statement at p. 4.

District of Columbia law does not embrace the right to develop a structure or building on every single piece of property. The Court of Appeals spoke to the situation in Russell v. District of Columbia Board of Zoning Adjustment, 402 A.2d 1231 (D.C. 1979), which involved an area variance to build a house on a lot that met only 76% of the minimum lot area requirement. The court stated (at p. 1233):

> Where substandard lots (those having a smaller size or lesser frontage than the minimum) are involved the practical difficulty is perforce of an extreme nature an inability to put the lot to any conforming use. In these instances the concepts of "practical difficulty" and "undue hardship" overlap so that the courts often tend to speak of them synonymously. [Palmer, supra at 542; emphasis supplied.]

Deprivation of all beneficial use is an extreme example of practical

> difficulty; area variances may issue, however, on less harsh facts. The seller in this case would be unable to reasonably dispose of his property for a permitted use, or to develop the lot himself.

The court upheld the Board's issuance of an area variance only because the small lot size and residential zoning meant that "there is no other use to which [the lot] can be put and denial of the application would effectively deprive the owner of any use of that lot." Id. at p. 1234 (internal quotation omitted). Russell quoted with approval another decision stating that if the area variance in that case had been denied, the property "will for all practical purposes be useless." Id. at 1235 n.6.

And that is the point: Is there another "use" to which the property can be put? The answer is "yes." Here, there is no "deprivation of all beneficial use," and denial of the requested variance will not mean that the lot is "useless." The applicants are presently using the lot as a two-car parking pad, a use that is expressly allowed in the RF-1 zone under a provision that carries forward the uses allowed in less dense residential zones (R-1, R-2, R-3) and specifically allows "car-sharing spaces on an unimproved lot with no more than two (2) spaces." Sections U-202.1(d), U-301.1.

The Board did grant a variance in Russell, but only after noting explicitly that the decision would not set a precedent for approving houses on lots that failed to meet the minimum lot requirements, and it cited the absence of similar undeveloped lots in the neighborhood. The Board could thus conclude that the requested variance may be granted without substantial detriment to the public good or an adverse impact on the neighbors.

2. The applicants suggest that any limitation on their ability to building on this property is develop the property is "perhaps unconstitutional," Statement at p. 6, such that the District of Columbia would be obligated to pay them money damages for "taking" their property. In a nutshell, a taking generally does not occur unless the land use restriction at issue "denies all economically beneficial or productive use of land." Lucas v. South Carolina Coastal Commission, 505 U.S. 1003, 1015 (1992). In addition, even a complete deprivation of use may not require compensation if the challenged limitations "inhere . . . in the restrictions that background principles of the State's law of property and nuisance already placed upon land ownership." Id. at 1029.

Whether there is a taking that entitles an owner to collect money damages is a factual question that turns on the circumstances and local laws in a given case, but whatever the result may in elsewhere, denial of this application will in no way affect the applicant's ability to continue using this lot in the same manner that it has been used for years.

3. The Statement cites several five BZA cases in which relief was granted as to minimum lot and lot width requirements. We attach a summary of those rulings as an addendum to this memorandum. These rulings do not support the applicants' argument in favor of subdivision. Four of the five rulings occurred before the 2016 Zoning Regulations took effect, and three them involved unopposed applications. The only post-2016 decision (No.19479, 1 Library Court, SE) approved an unopposed application allowing an addition to a current non-conforming structure

on an alley lot that did not exacerbate the non-conformity. Of note, the Board's Summary Order explicitly stated that the Board "made no finding that the relief is either necessary or required." These past rulings are thus not precedent for the variance and exception relief requested here.

Respectfully submitted,

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ADDENDUM: RESPONSE TO APPLICANTS' CITED BZA DECISIONS

No. 19479 (2017), 1 Library Court, SE

Variance and exception relief allowed as to a non-conforming structure on a non-conforming alley lot. Non-conformities could not be rectified, and no way to obtain a permit. Non-conformities would not be extended.

ANC and OP were in support of the proposal; no opposition.

Summary Order states that the Board "made no finding that the relief is either necessary or required," leaving the issue to the Zoning Administrator.

No. 19051 (2015), 1609 Levis Street, NE

Pre-ZR16 request for relief from minimum lot and width requirements as to a "long vacant" lot; relief would permit construction of a house that would complement other houses in this R-4 zone.

ANC and OP were in support of the proposal, and there was no opposition.

Decided via Summary Order.

No. 18355 (2012), 1400 block of Third Street, SW

Pre-ZR16 request for relief from minimum lot and lot width requirements to build two-family dwelling in R-4 zone.

OP in favor, no ANC report, no opposition.

Decided via Summary Order.

No, 18342 (2012), 2425 Franklin Street, NE

Pre-ZR16 request for relief from minimum lot and lot width requirements to build single-family detached dwelling in R-1-B zone.

OP in support with revisions; no ANC report; no opposition.

Decided via Summary Order.

No. 17989 (2010), 4615 Rear 42nd Street, NW

Pre-ZR16 request to convert an existing non-residential structure on an alley lot (an artist studio in a 100-year-old carriage house) to a one-family dwelling in the R-2 zone.

OP not opposed if Board approves residential use; ANC in support if new building owner-occupied; immediate neighbors opposed.

Board order granting relief, subject to owner occupancy condition, states: "The Applicant asserts that DCRA requires this variance in order to obtain a record lot. It is not clear to the Board that this is so. However, as this is a self-certified application, and there is no opposition to the variance from the minimum dimension requirements, the Board will not second-guess the Applicant's request. As the Applicant notes, the adjacent lots are not owned by the Applicant and he is, therefore, unable to make the property conform to the minimum lot dimensions without area relief."

CERTIFICATE OF SERVICE

I certify that on April 16, a copy of this supplement statement was served, via e-mail, as follows:

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