

**BOARD OF ZONING ADJUSTMENT**

**Applicant’s Statement of Vitis Investments LLC**

**421 T Street, NW (Square 3090, Lots 804, 805, and 807).**

**I. INTRODUCTION AND NATURE OF RELIEF SOUGHT.**

This Statement is submitted on behalf of Vitis Investments LLC (the “**Applicant**”), owner of the property located at 421 T Street, NW (Square 3090, Lot 804). The property at 421 T Street, NW improved with a three-story, single-family, detached dwelling (the “**Building**”). Lots 805 and 807 are currently unimproved tax lots.

The Applicant intends to combine Lot 804, 805, and 807 to create a new lot with 7,870 square feet of land area (the “**Subject Property**”). The Subject Property is located in the LeDroit Park Historic District and the RF-1 Zone. The Applicant is proposing to construct a three-story rear addition to the Subject Property and convert the Building to eleven (11) residential dwelling units—seven (7) of which will be market rate units and four (4) of which will be Inclusionary Zoning (“**IZ**”) units (the “**Project**”).

The Applicant is requesting the following areas of relief:

**1. Special Exception Relief Pursuant to U § 320.2.**

The Applicant is proposing to convert the Building from a single-family dwelling to eleven (11) principal dwelling units. Accordingly, the Applicant is requesting special exception relief pursuant to U § 320.2.

**2. Variance relief from U § 320.2(d)**

Subtitle U § 320.2(d) requires that an Applicant seeking a conversion have “a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit.” The Applicant is proposing eleven (11) residential units, which would require 9,900 square feet of land area. The Subject

Property only has 7,870 square feet—which provides 715 of square feet of land area per unit. Accordingly, the Applicant is requesting variance relief from U § 320.2(d).

**3. Variance relief from E § 303.1**

Subtitle E § 303.1 states that “the maximum permitted height of buildings or structures and any additions thereto not including the penthouse, in an RF-1 Zone shall not exceed thirty-five feet (35 ft.) and three (3) stories.” The Historic Preservation Review Board (“HPRB”) is requiring that the height of the rear Addition be similar to the height of the existing Building. The existing Building is forty-six feet and four and a half inches (46 ft. 4.5 in.) in height. Subtitle E limits the maximum building height of the RF-1 Zone to thirty-five feet (35 ft.) as a matter-of-right and forty feet (40 ft.) as a special exception; accordingly, the Applicant is requesting variance relief from the height restrictions of E § 303.1, in order to construct a rear addition over forty feet (40 ft.) in height.

**II. JURISDICTION OF THE BOARD.**

The Board has jurisdiction to grant the special exception relief requested pursuant to Subtitle U § 320.2 and the variance relief requested pursuant to X § 1000.1.

**III. BACKGROUND.**

**A. Description of the Subject Property and Surrounding Area.**

The Subject Property includes the property located at 421 T Street, NW, plus the adjacent tax lots to the north (Lots 805 and 807). The Applicant is proposing to combine the lots into one new record lot measuring 7,870 square feet in land area. The Subject Property is located in the RF-1 Zone District and the LeDroit Park Historic District. Abutting the Property to the north is a semi-detached single-family dwelling which fronts on U Street, NW. Abutting the Subject Property to the south is T Street, NW. Abutting the Subject Property to the west is the Howard University Day Care Center. Abutting the Subject Property to the east is a single-family row dwelling and a public alley.

**B. Proposed Project.**

The Applicant is proposing to construct a three-story addition (the “**Addition**”) at the rear of the existing Building. The existing Building is forty-six feet and four and a half inches (46 ft. 4.5 in.) in height and while the Addition will not be quite as tall as the existing Building, it will be over forty feet (40 ft.) in height as required by HPRB. The Applicant is requesting relief in order to use the Building and Addition for eleven (11) residential units, four (4) of which will be set-aside as IZ units. The Applicant is proposing a mix of one- and two-bedroom units. The Applicant is not proposing a large rectangular addition, but rather one that mirrors the existing Building in height and bulk. The courtyard space serves as a center point and provides light and air into the units and breaks up the space. As required by HPRB, the existing Building and proposed Addition will be clearly distinguishable. The Applicant has provided precedent images on pages 6-7 of the Plans included with this Application.

The Project meets all other development standards of the RF-1 Zone, such as lot occupancy, rear yard, side yard, pervious surface, and parking. Due to its location within one half mile (0.5 mi.) of the Shaw-Howard Metro station, the Applicant is required to provide three (3) parking spaces (1 per 2 residential dwelling units, reduced by 50%). The Applicant is proposing two (2) more spaces than what is required, for a total of five (5) parking spaces which can be accessed from the public alley to the east of the Subject Property. The Building's design is ultimately subject to HPRB review.

**IV. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF.**

**A. Overview.**

Pursuant to Subtitle X § 901.2 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and

will not tend to affect adversely the use of neighboring property, subject also, in this case, to the specific requirements for relief under Subtitle U § 320.2 of the Zoning Regulations.

In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

**B. General Special Exception Requirements of Subtitle X § 901.2.**

The granting of a special exception in this case “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and “will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps ...” (11 DCMR Subtitle X § 901.2).

**1. Addition will be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.**

The Addition will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Zoning Regulations permit the conversion of a single-family dwelling to eleven (11) units via special exception, so long as the Applicant provides Inclusionary Zoning Units. Therefore, the proposed use was contemplated by the Zoning Commission and enumerated in the 2016 Zoning Regulations. Accordingly, the proposed Addition and use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

**2. Addition will not tend to affect adversely, the Use of Neighboring Property in accordance with the Zoning Regulations and Zoning Maps.**

As described more fully below, the Addition will also not adversely affect the use of neighboring properties as the proposed Addition limits impacts on light, air, and privacy.

**C. Requirements of Subtitle U § 320.2.**

In order to have three (3) principal dwelling units on the Subject Property, the Applicant must request special exception relief pursuant to U § 320.2. The proposal in this Application satisfies the requirements of 11 DCMR Subtitle U § 320.2(a) through 320.2(l) as follows:

**Section 320.2(a)** *“The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit to a maximum height of forty feet (40 ft.) provided the additional five feet (5 ft.) is consistent with Subtitle U §§ 320.2(f) through 320.2(i);*

As described in section V, below, the Applicant is requesting variance relief to construct an Addition that is more than forty feet (40 ft.) in height.

**Section 320.2(b)** *The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6;*

The proposed Addition will increase the number of units from one (1) unit to eleven (11) units. Therefore, the 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup> units will be set aside, for a total of four (4) IZ units.

**Section 320.2(c)** *There must be an existing residential building on the property at the time of filing an application for a building permit;*

There is an existing residential structure on the Subject Property at the time of filing an application for a building permit.

**Section 320.2(d)** *There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;*

The proposed structure includes eleven (11) units, requiring a minimum of 9,900 square feet of land area. The Subject Property will have a land area of 7,870 square feet, which provides 715 of square feet of land area per dwelling unit. Accordingly, the Applicant is requesting variance relief from this section as described more fully in section V, below.

**Section 320.2(e)** *An addition shall not extend farther than ten feet (10 ft.) past the farthest rear wall of any adjoining principal residential building on any adjacent property.*

As the Building is a detached structure, there are no adjoining principal residential buildings.

**Section 320.2(f)** *Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition;*

The Addition, including roof structures and penthouses, will not block or impede the function of a chimney or other external vent on the adjacent properties.

**Section 320.2(g)** *Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system;*

The Addition will not interfere with the operation of an existing or permitted solar energy system on any adjacent property. To the Applicant's knowledge, there are no existing solar energy systems on the adjacent properties.

**Section 320.2(h)** *A roof top architectural element original to the house such as cornices, porch roofs, a turret, tower, or dormers shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure's rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure;*

The Applicant is not proposing to alter any architectural elements original to the Building.

**Section 320.2(i)** *Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

- (1) The light and air available to neighboring properties shall not be unduly affected;*

The light and air available to neighboring properties will not be unduly affected. The Applicant is complying with the lot occupancy, rear yard, and side yard requirements of the zone, as well as all other development standards. The Applicant has proposed a court at the center of the Building to break up the bulk and limit impacts on light and air. The existing Building is already forty-six feet and four and a half inches (46 ft. 4.5 in.) in height. The Addition is significantly separated from the adjacent buildings. It will abut an alley to the east and the rear of the day care building to the west.

*(2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and*

The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. The proposed west-facing windows will face the rear of the building on 1911 5<sup>th</sup> Street. The Addition will also be separated by approximately thirty-five feet (35 ft.) from the rear of 1911 5<sup>th</sup> Street. The proposed east-facing windows on the Addition will abut an alley, not the adjacent building. On the existing east façade, the Applicant is proposing to add a couple windows on the cellar level but will eliminate windows on the first and second levels.

*(3) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street or alley;*

The conversion and the associated Addition, as viewed from the street, shall not substantially visually intrude upon the character, scale, and pattern of houses along the T Street. The current design reflects HPRB comments which require the Applicant to maintain the Building's front facade. The Addition is at the rear and will not be highly visible from T Street, NW. Regardless, the design is subject to HPRB approval and the Applicant will comply with HPRB requests.

**Section 320.2(i)** *In demonstrating compliance with Subtitle U § 320.2(i) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways;*

The Applicant has submitted plans showing the relationship of the proposed Addition to the neighboring properties and the public ways.

**Section 320.2(k)** *The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block;*

No special treatment is necessary because the Addition will maintain ample open space, will be a size and scale appropriate for the site, and will have a design consistent with the neighborhood.

**Section 320.2(l)** *The Board of Zoning Adjustment may modify or waive not more than three (3) of the requirements specified in Subtitle U §§ 320.2(e) through § 320.2(h) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle U § 320.2(i)."*

The Applicant is not requesting any waivers.

**V. THE APPLICATION SATISFIES THE VARIANCE REQUIREMENTS OF SUBTITLE X.**

The burden of proof for an area variance is well established. The Applicant must demonstrate three elements: (1) unique physical aspect or other extraordinary or exceptional situation or condition of the property; (2) practical difficulty from strict application of the Zoning Regulations; and (3) no substantial detriment to the public good or the zone plan. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990).

An Applicant for area variance relief must demonstrate that, as a result of the exceptional situation or condition of the Property, it will encounter practical difficulties in strictly complying with the Zoning Regulations. See *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287

A.2d 535,540-41 (D.C. 1972), noting that area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden. An applicant experiences a practical difficulty when compliance with the Zoning Regulations would be “unnecessarily burdensome.” See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

A. The Property is Uniquely Affected by an Exceptional Situation/Condition.

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.

The Applicant is requesting relief from the height limitations of E § 303.1 and from the nine-hundred square foot (900 sq. ft.) requirement of U § 320.2(d). The Applicant is faced with an exceptional situation due to the existing improvements on the Subject Property, the size of the Subject Property, the design challenges related to the improvements, and the HPRB requirements and restrictions. While being in a historic zone in and of itself is not unique, the specific requests by HPRB placed on this particular Property are unique. The existing Building is nonconforming with respect to height and HPRB is requiring that the height of the Addition be as close to the existing height of the Building as possible. The Applicant has managed to slightly lower the Addition's height but must keep it relatively close in height to the existing Building in order to make the floors of the Addition level with the existing floor heights.

The existing Building and lot are also unique in the square. The only other property larger than the Subject Property, is 1911 5<sup>th</sup> Street, NW, directly to the west. That Building is used as a childcare center for Howard University. The Building itself is unlike any other building in the square in terms of size and shape. All other buildings (besides the 1911 5<sup>th</sup> Street, NW) are either row dwellings or semi-detached dwellings. The existing Building is a large, detached single-family dwelling with room for five (5) parking spaces, which makes it uniquely suitable to be converted into a multi-family residential apartment building. Despite the large size of the Building, the proposed lot occupancy is limited to only forty one point six percent (41.6%)—well under the permitted lot occupancy limit in the RF-1 Zone.

Although the Building is large, there are still significant design challenges related to its footprint. HPRB has suggested that the Applicant demolish a small addition on the existing Building that is not original to the Building. Once that non-original portion of the Building is demolished, the rear of the Building will be clearly visible from 5<sup>th</sup> Street, whereas a portion of the rear is now blocked by the non-original portion (see page SD 2.7 on the Plans). The Applicant is not permitted to modify that roofline or alter the rear in any way now that it's in view from 5<sup>th</sup> Street. And as that cannot be extended, covered up, or modified, there is no way to connect the third story of the existing Building with the third story of the Addition.

Due to the existing footprint and HPRB restrictions prohibiting demolition of the original structure, the Applicant cannot simply add a rectangular box addition on the rear of the Building. Demolishing portions of the existing Building and constructing a large rectangular rear Addition with even proportions would provide greater design flexibility than the existing Building and proposed Addition. In that scenario, the space could be efficiently combined, whereas now the units are largely separated into the existing Building and proposed Addition. As discussed below,

these factors that create an exceptional situation will lead to a practical difficulty for the Applicant if the Zoning Regulations are strictly enforced.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty to the Owner.

Generally, to warrant granting area variance, it must be shown that strict compliance with area restrictions would be unnecessarily burdensome. *Palmer v. District of Columbia Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). The variance procedure has many purposes. It is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights and prevent usable land from remaining idle." *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 541-42 (1972).

In this case, A strict application of the Zoning Regulations would be unnecessarily burdensome to the Applicant and result in a practical difficulty. Regarding the height limit, the restrictions placed on the Building by HPRB regarding height require the Addition to be a similar height as the existing height of the Building, which is forty-six feet and four and a half inches (46 ft. 4.5 in.). If the relief were not granted, the Addition could only be thirty-five feet (35 ft.) as a matter-of-right, or forty feet (40 ft.) by special exception. This would not comply with the HPRB comments and it would likely not be approved by HPRB. The result would be an obvious practical difficulty, as the Applicant could no longer construct the Addition, eliminating six (6) units. Even if the Applicant were able to lower the Addition slightly, its current plan is to keep the floors of the existing Building and proposed Addition at the same level, so it seamlessly transitions. The complexity of construction would increase if the floor joists were at different levels. Other than the height, the Addition itself is permitted as a matter-of-right in terms of its length, lot occupancy, rear yard, and side yards.

Regarding the nine-hundred square foot (900 sq. ft.) rule, the Applicant will face a practical difficulty if it cannot have eleven (11) residential units. If the regulations are strictly enforced, the Applicant has the following options:

1. Special Exception with Addition: Currently the Applicant is proposing six (6) units in the Addition, and five (5) units in the existing Building. Due to the design restrictions and the fact that the Applicant cannot simply construct a rectangular addition at the rear of the Building, there is no way to effectively combine the existing Building and proposed Addition so that units can be split among the existing and proposed space. The location of the interior staircase and hallway are relatively fixed because they cannot be moved to the eastside or westside of the Building because the façade is not even and jogs around. So, while the center of the Building is the most efficient space for the stair and hallway, it effectively splits the building down the middle and the units cannot be adjusted so that they fit width wise across the Building. Accordingly, the existing unit layout is relatively fixed as well. Further, as there is no connector between the Addition and the existing Building at the third floor, the units on the second and third floor of the Addition are two-story units.

If the Applicant were to eliminate three (3) units, it would have to start combining the units, but as it cannot combine space on the same floor effectively in the existing Building, each unit would have to be combined with the one directly above or below it. That becomes an issue for a number of reasons. For example, the two-story, one-bedroom unit proposed in the cellar and first floor of the existing Building would have to be combined with the two-bedroom unit above. So instead of having two, two-story units, you would have one four-story unit or alternatively a studio in the cellar and three stories above. In a common scenario with a rectangular addition with even proportions, eliminating units would simply result in slightly larger units, but would not

dramatically change the layout. But because of the existing improvements and restrictions, the Building would be a mix of studios and large three- or four-story units. That scenario would lend more to a co-living situation and generally limit the pool of potential tenants.

In the Addition, the second and third story units are two-levels. The units on the second and third stories cannot be effectively combined without creating egress issues and massive units. Similarly, to the existing Building, the unit space on the cellar and first floor cannot be combined on each respective floor because of the hallway that splits the building down the center. Even if you could combine the units on the cellar level with the units on the first floor, the Applicant would still be providing nine (9) units. It would be required to eliminate one more in the existing Building which creates a practical difficulty as described above. Instead of having a mix of comfortably sized one-bedroom and two-bedroom units as is proposed, the Applicant will end up with massive two-story, two-bedroom units, one or two very large one-bedroom units, and massive three- or four-story, three- or four- bedroom units.

The pool of potential tenants for a four-story four-bedroom unit is understandably smaller than the pool for a comfortably sized one- or two-bedroom unit. Accordingly, if the Applicant were forced to do a special exception project with only eight (8) units, it would likely eliminate the Addition because the market for large three- and four- story units is unknown and it would be a large risk to build such an Addition without being able to properly estimate the return.

2. Special Exception without the Addition: The Applicant could convert the Building to eight (8) units via special exception, but as an Addition is not feasible with only eight (8) units, the Applicant would be limited to the existing Building space. There are currently only five (5) units proposed in the existing Building space. Providing eight (8) units in that space is not practical

unless the Applicant created eight (8) studio units. Alternatively, the Applicant could eliminate units.

Six (6) one- and two- bedroom units could comfortably fit in the existing Building. However, if the Applicant were forced to re-work the Project so much that the only way to maintain a marketable mix of units was to eliminate five (5) of the originally proposed units, the project becomes significantly less feasible. Even though the Applicant would like to provide multiple IZ units, the ability to provide the IZ units diminishes as the number of market rate units diminishes, because the market-rate units pay for the IZ units. If the Applicant were to construct six (6) total units, it would have to provide two (2) IZ units; if it were to construct five (5) units, it would only have to provide one (1) IZ unit. Accordingly, the only way to maintain any feasibility would be to construct five (5) units, only one (1) of which is IZ. That way, the Applicant could take space that would have otherwise dedicated to an IZ unit and combine it with a market rate unit to earn back potential money lost from having to eliminate so many units.

There is no way for the Applicant to increase the land area of the Subject Property. The Applicant even bought land from tax lots to the north in order to increase the size and try to meet the nine-hundred square foot (900 sq. ft.) rule, but at this point it cannot feasibly purchase enough land—2,030 square feet—in the surrounding area. The directly adjacent property to the east, at 417 T Street, NW, only has 1,599 square feet so in order to have enough land to do the Project via special exception, it would have to purchase the two properties to the east, obtain approval from HPRB to demolish the buildings, and create a side addition. That is not a feasible or practical option.

To summarize, if the Applicant is limited to eight (8) units via special exception, the proposed Addition—or really any addition—would likely not be feasible with only eight (8) units

due to the existing improvements and limitations on demolition due to HPRB restrictions. The Applicant would have to utilize the existing Building footprint, which can comfortably fit six (6) units, but as the Project would be down to about half of the amount of the originally proposed number of units, a second IZ unit would also be less feasible and the Applicant would likely be able to provide only five (5) units. This is practically difficult for the reasons described above in detail, but overall, it is an obvious practical difficulty because the Applicant would not be able to construct eight (8) units as is permitted by special exception.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan.

Granting an area variance from U § 320.2(d) and E § 303.1 would result in no substantial detriment to the public good. Regarding the height, the existing Building is already over the height limit and the Project and design will ultimately be reviewed and approved by HPRB. The number of units will not create a detriment to the public good as the Applicant is providing high-quality rental units, including four (4) IZ units. The size of the units lends itself to couples and families rather than co-living.

The property management company that will operate the property is called Kin. Kin is a family housing operator dedicated solely to managing properties targeted toward urban families. The Applicant is planning to provide amenity space onsite for family programming such as nanny sharing, community events geared toward children, and customized parental support services. These services will be available to all eleven (11) units, regardless of whether they are IZ or Market. Offering support services for only eight (8) families would not only be uneconomical but also a missed opportunity to serve families in the District.

Applicant's Statement  
421 T Street, NW

Granting variance relief would not result in substantial impairment to the intent, purpose and integrity of the Zone Plan. No other property in this square or surrounding neighborhood is faced with this exact set of circumstances, making the Subject Property unique.

**VI. CONCLUSION.**

For the reasons stated above, this application meets the requirements for special exception relief and variance relief by the Board, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

*Martin P Sullivan*

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Martin Sullivan  
Sullivan & Barros, LLP  
Date: April 6, 2020