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September 28, 2012

VIA HAND DELIVERY

Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210S
Washington, DC 20001

RECEIVED
D.C. OFFICE OF ZONING
2012 SEP 28 PM 12:25

Re: Application No. 18421 – Supplemental Statement of the Applicant

Honorable Members of the Board:

The Applicant has retained our firm, Griffin & Murphy, LLP, to represent it in connection with the above stated application. We submit the enclosed supplemental statement in support of a modified application for a variance pursuant to subsection 2001.3 relating to lot occupancy (§403.2) and rear yard (§404.1) requirements to allow the Applicant to convert a single family dwelling to a multi-unit dwelling, in the R-5-D District at premises 3602 16th Street, NW (Square 2624, Lot 0776). The Applicant no longer requires parking relief.

Thank you for your attention to this application.

Sincerely,


Meridith H. Moldenhauer

Enclosures

Cc: Office of Planning (Via Hand, with enclosure)
ANC 1D (Via U.S. Mail, with enclosure)

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18421

EXHIBIT NO. 23

Board of Zoning Adjustment
District of Columbia
CASE NO.18421
EXHIBIT NO.23

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF
3579 WARDER STREET, LLC**

**BZA APPLICATION NO. 18421
HEARING DATE: October 23, 2012
ANC 1D**

SUPPLEMENTAL STATEMENT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of 3579 Warder Street, LLC (the “Applicant”), the owner of property located at 3602 16th Street, N.W., Lot 776 in Square 2624 (the “Property”) in support of a modified application for an area variance from lot occupancy (§403.2) and rear yard (§404.1) requirements under subsection 2001.3 to allow the Applicant to convert a single family dwelling to a multi-unit dwelling in the R-5-D District (parking relief is no longer required).

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant the variance relief requested herein pursuant to §3103.2 of the Zoning Regulations.

III. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A: Portion of the Baist Atlas plats showing the Property;

Exhibit B: Portion of the Zoning Map showing the Property;

Exhibit C: Revised Architectural Plans and Elevations;

Exhibit D: Letter of Authorization;

Exhibit E: ANC Resolution in Support;

Exhibit F: Letters of Support from Neighbors; and

Exhibit G: Outline of Testimony.

IV. BACKGROUND

A. Background Information Regarding the Site

The Property, also known as Lot 776 in Square 2624, contains approximately 1,236 square feet of land area and is located in Northwest Washington, D.C. The Property is located in a group of four properties at the southern end of Square 2624 (Lots 816, 775, 776, and 815). This group of properties is bounded by Oak Street on the southwest, Brown Street on the northwest, the Oaklawn Apartments on Lot 828 to the north, and 16th Street on the east. (see Portion of Baist Atlas, attached here to as Exhibit A). The Property is located within the R-5-D District (see Portion of Zoning Map, attached hereto as Exhibit B), and is located approximately 0.6 miles from the Colombia Heights Metrorail entrance. The Property sits on the northwest side of 16th Street and currently is improved with a vacant, 3-story, single family dwelling with a basement. The Property has been boarded up since 2010 when it was severely damage by fire. The Property has approximately 26 feet of frontage along Brown Street, NW and 24 feet of frontage on 16th Street. The Property is not located within any historic district, and the existing building on the site is not listed on the D.C. Inventory of Historic Sites.

B. Description of the Improvements in the Surrounding Area

The Property is located in a relatively narrow R-5-D District that includes lots fronting on the west side 16th Street from Spring Place, NW to the north and U Street, NW to the south. Lots on the east side of 16th Street, directly across the street from the Property, are zoned R-5-B. Portions of the east side of 16th Street further south are zoned R-5-D. Other nearby structures in the same R-5-D District include the GAP Community Child Care Center, CityWide Computer &

Nursing Assistant Center, and the Woodner Apartments. Structures in the R-5-B District directly across 16th Street include attached dwellings and the National Dental Association.

C. Description of Traffic Conditions and Mass Transit in the Surrounding Area

The Property is well serviced by a number of public transportation facilities and services including MetroBus routes, Capital Bikeshare, Metro and Zipcars. The MetroBus routes along 16th Street include the following S1, S2, S4, and S9. Moreover, a MetroBus stop is located directly in front of the Property at the northwest corner on the intersection of 16th Street NW and Oak Street NW. Also within walking distance of the Property are Capital Bikeshare Stations located on 14th Street NW & Spring Road NW and Lamont Street NW & Mount Pleasant Street NW. Furthermore, the Property is located approximately 0.6 miles from the entrance to the Colombia Heights Metrorail station. Five Zipcar spaces are located within 5 blocks of the Property.

D. Description of the Proposed Development

As shown on the revised architectural plans (see Revised Architectural Plans and Elevations, attached hereto as Exhibit C), the Applicant proposes to convert the building from a vacant, three-story single family dwelling with a basement to a 3-story, multi-unit dwelling with a basement and penthouse. The building will include 4 residential units. The revised plans show 1 parking space located in the basement with access from Brown Street. The building will have a height of 52 feet, 3 inches in the front and 48 feet, 9 inches in the back.

V. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from (i) lot occupancy (§403.2) and rear yard (§404.1) requirements under subsection 2001.3 in this case. Parking relief has been removed pursuant to the revised architectural plans. Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) The owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need to demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. D.C. 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 practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” *See Gilmartin v. D.C. Bd.*

Of Zoning Adjustment, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met in this Application.

VI. APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

A. The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exception Situation or Condition

The phrase “exceptional situation or condition” in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

In this case, the Property is uniquely affected by the combination of the following factors: (1) the existing nonconformance of the structure, (2) extensive damage to the existing structure caused by a fire in November 2010, and (3) the topography of the site, particularly its steep slope and significant grade differential. As explained in more detail below, the combination of these factors results in an extraordinary and exceptional condition that imposes a number of significant development constraints on the Property.

The Property is affected by two existing nonconformities. Pursuant to §403.2 of the Zoning Regulations, the R-5-D District permits a maximum lot occupancy of 75 percent; however, the Property is currently improved with a structures that occupies 95 percent of the lot. Pursuant to §404.1, the minimum depth of a rear yard in an R-5-D District is 15 feet. The

existing structure provides no rear yard. These two existing nonconformities create an exceptional situation which will result in a practical difficulty for the Applicant.

The Property was severely damaged by a fire in 2010. The fire completely destroyed the top two floors of the building. Due to the extensive damage, the building has been boarded up and was not sold for almost two years. The severe damage to the Property creates an exceptional situation. Strict application of the zoning regulations would cause the owner to suffer a practical difficulty.

Last, the Property is unusual because of its topography. The lot slopes significantly upward from 16th street, going from the front of the Property toward the rear. The substantial grade differential makes this property unique relative to properties in the surrounding area. Only four (Lots 816, 775, 776, and 815) of the roughly 32 lots within a 200 foot radius of the Property (12.5%) slope to the extent this Property does. The unique grade differential makes this lot uniquely challenging to develop.

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

1. Nonconforming Structure (§2001.3)

The strict application of the lot occupancy and rear yard requirements in this case would result in a practical difficulty to the Applicant. Section 2001.3, in reference to nonconforming structures devoted to conforming uses, permits enlargements or additions to the nonconforming structure provided (a) the structure conforms to percentage of lot occupancy requirements and (b) the addition or enlargement itself (1) conforms to use and structure requirements and (2) does not increase or extend any nonconforming aspect of the structure or create new nonconformity.

i. Lot Occupancy (§403.2)

Pursuant to §403.2 of the Zoning Regulations, the Property does not conform to the lot occupancy requirement. While the project does not increase or extend the nonconforming lot occupancy of the structure, the structure does not conform to lot occupancy requirements as required by §2001.3(a). Thus, a variance has been requested with respect to lot occupancy. Adherence to the 75 percent lot occupancy requirement would require the Applicant to tear down a significant portion of the existing structure. Furthermore, due to the significant fire damage the economic cost to improve the Property and return the building to habitable use would not be practical if the Applicant were required to meet the lot occupancy requirement. Few alternatives exist for the Applicant to build the matter-of-right square footage permitted on the site. Building the matter of right square footage with 75% lot occupancy would result in a very high structure that would conflict with the character of the area. The proposed plan, and requested variance, is preferable with regard to appearance from 16th Street. For the above reasons, strict application of the lot occupancy requirement would cause a practical difficulty for the Applicant.

ii. Rear Yard (§404.1)

Pursuant to §404.1, the minimum depth of a rear yard in an R-5-D District is four inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 feet. The height of the existing structure requires a minimum rear yard width of 15 feet but provides no rear yard. The proposed addition will increase the height of the rear structure resulting in a rear yard width requirement of 16'-4" (1 ft/4 in = 48'-9"/16'-4"). Both the current and proposed

structure have no rear yard. Because the addition increases the nonconformity of the rear yard, the Applicant has requested a variance from 2001.3(b).

As discussed above with the lot occupancy requirement, adherence to the rear yard requirement would require the Applicant to tear down a significant portion of the existing structure. Tearing down 17 feet of the rear of the structure would create a practical difficulty for the Applicant in connection with construction efficiency, unit layouts and financial viability. Additionally, the existing condition of the building resulting from the fire damages creates an economic challenge if the Applicant was required to comply with the rear yard requirement. Therefore, strict application of the rear yard requirement would cause a practical difficulty for the Applicant.

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

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the zoning relief. The proposed project will not expand beyond the current footprint of the existing building. The Applicant has worked with the Office of Planning and set back the penthouse from 16th Street based on a request to limit the visibility of the addition from 16th Street, despite the Applicants ability to building a full fourth floor as a matter of right (see Revised Architectural Plans and Elevations, attached hereto as Exhibit C, p A7). The proposed project adequately balances the zoning regulations goals of protecting existing properties and modernizing a property that has been boarded up since a fire in November 2010. The Applicant conducted extensive outreach to the neighboring property owners. The Applicant obtained letters of support from more than ten

individuals in the local area (see Letters of Support from Neighbors, attached hereto as Exhibit E). The Applicant attended the ANC 1D meeting on September 18, 2012, presented the revised project to the community and obtained a resolution in support of the Application (see ANC Resolution in Support, attached hereto as Exhibit E).

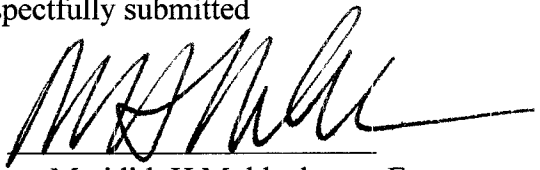
VII. WITNESSES

1. Mohammad Pishvaeian, on behalf of Applicant
2. James Killette, architect on behalf of Killette and Associates

VIII. CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted

By: 

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