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Executive Summary

Case No. 18421

Site Description

Address: 3602 16th Street, NW
Square/Lot: Sq. 2624, Lot 776

Zoning: R-5-D

Existing: Vacant, 3-story + basement, single family dwelling damaged by December 2010 fire

Historic District: None

Adjacent Properties:

- Oaklawn Apartments
- Woodner Apartments
- Attached Row Dwellings

Public Space Projection:
Applicant's architect has engaged DDOT's public space department and received oral confirmation that the projection will be permitted.

Relevant Cases:

- *Palmer v. D.C. BZA*
- *Tyler, et. al. v. D.C. BZA*
- *Wolf v. D.C. BZA*
- BZA Case No. 18163 (Fairmont Partners, LLC)

Project Description

Applicant	3579 Warder Street, LLC
Proposal	Multi-unit dwelling (4 condominium units)
Relief Sought	• 2001.3 Nonconforming structure requirements: ➢ 403.2: Lot Occupancy ➢ 404.1: Rear Yard Requirements • 402.4 Floor-to-area ratio
Variance Standard	**Exceptional Circumstance**: Confluence of Factors 1. Existing nonconformance structure as to lot occupancy and rear yard 2. Extensive fire damage & existing condition of the property 3. Topography – steep slope, grade differential **Strict Application Results in Practical Difficulty**: • Compliance with lot occupancy and rear yard requirement would require Applicant to tear down a significant portion of the rear existing structure • Economic infeasibility in light of costly repairs due to extensive fire damage (i.e. removal and replacement of structurally instable concrete joist) • Practical Difficulty three story walk up due to steep slope of lot • Applicant would have practical difficulty in reasonably developing and marketing a project that confirms with the Zoning Regulations. **No Detriment to Public Good**: • Measures taken to limit visibility of penthouse • Allows idle land to be put to beneficial use

Comments of District Agencies and Community:

- Support from ANC 1D
- 10 Letters of Support from Neighbors
- OP finds no detriment to public good or zone plan but cannot recommend approval

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October 17, 2012

VIA HAND DELIVERY

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

Re: Application No. 18421 – 3602 16th Street N.W. (Square 2642, Lot 776) Prehearing Statement of the Applicant

Honorable Members of the Board:

On behalf of the Applicant in the above-referenced case and pursuant to 11 DCMR 3113.8, we hereby supplement the filings made with the initial application and offer the following as the Prehearing Statement of the Applicant. We respectfully request that, due to the recent retention of our firm in this application, the Board waive the 14 day requirement and accept this submission pursuant to 11 DCMR 3100.5. This Prehearing Statement shall also serve as a request to amend the Application. The Applicant filed a self-certified application and upon further review the proposed project must request relief pursuant to 11 DCMR 3113.8 under §402.4 relating to floor-to-area (FAR) ratio (see attached revised Form 135 illustrating the revised calculations for FAR, attached hereto as Exhibit A). We submit that no additional notice is required because the architectural plans and proposed project have not changed.

3. TOPOGRAPHY OF PROPERTY

Finally, the Property is also peculiar 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 unusual relative to properties in the surrounding area and uniquely challenging to develop and market.

Based on knowledge of the residential housing market and extensive experience in the industry, the Applicant is aware that units requiring a steep, two-story climb prior to reaching the front door are particularly difficult to market. The existence of this circumstance for this Property affects the economic feasibility of the project. The Applicant has completed an extensive analysis and determined that anything less than the proposed project is simply not economically feasible and the building would continue to sit vacant. While the Property has access to Brown Street, the Applicant and his Architect have determined that using Brown Street as a primary entrance is not a viable alternative. The Applicant came up with the current configuration based on a need to provide light and air to the interior of the units, locate the common stair in the appropriate location, and ensure proper unit design. In addition to the above factors, the Property was intentionally oriented to face north-east towards 16th Street with bedrooms in the rear on Brown Street facing south-west.

B. Practical Difficulty

Without the area variances sought by the Applicant with regard to (1) lot occupancy, (2) rear yard requirements, and (3) floor-to-area ratio, the Applicant would suffer a practical difficulty. The Court of Appeals has repeatedly held that "economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases" *Tyler, et. al. v. District of Columbia Board of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992)(internal citations removed). As described in more detail below, strict application of the rear yard, lot occupancy, and FAR requirements will create a practical difficulty for the Applicant due to the economic infeasibility of developing this structure in compliance with the Zoning Regulations as well as the existing nonconformance of the structure and unusual topography.

1. <u>REAR YARD</u>

In an R-5-D District, the minimum rear yard is 4 inches for every 1 foot of height, but not less than 15 feet. The existing structure is 36'-3'' resulting in a minimum rear yard requirement of 15 feet. The proposed structure is 48'-9'' resulting in a minimum rear yard requirement of 16'-4''. The existing building provides no rear yard. Thus, if the 16'-4'' rear yard requirement were imposed the Applicant would be required to demolish a large portion of the building. Imposing the rear yard requirement would create undesirably small units at less than 900 square feet each, awkward layouts, and unmarketable bedrooms. In *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936 (D.C. 1979), the Court of Appeals upheld a Board decision granting an area variance to permit conversion to a three-unit rental apartment where "marketability" of the property would otherwise be "unfeasible" and investment would yield loss rather than profit. Here, based on the peculiar and exceptional practical difficulty of renovating the damaged building and the cost of demolishing nearly seventeen feet of the existing structure makes meeting the rear yard requirement financially infeasible.

The Applicant will testify, based on the attached Profit and Loss Analysis, that there is no feasible alternative for rehabilitation of this property because compliance with the zoning regulations with respect to the rear yard will result in a loss (see Profit and Loss Analysis, attached hereto as Exhibit E). The Profit and Loss Analysis shows a loss based on the projected sale price of units in a structure that complies with the minimum rear yard requirement relative to the total investment required to bring those units to the market. The figure for the total investment required is a conservative estimate because it does not include the contingency budget, which in this case is particularly high due to the unknown conditions of the building following the fire and the extended vacancy.

2. LOT OCCUPANCY

In an R-5-D District, the maximum lot occupancy permitted as a matter of right is 75%. In order to comply with lot occupancy the existing lot occupancy would need to be reduced by 20%. Based on the expected price per square foot for each unit, the sale values of the units created in a structure that complies with maximum lot occupancy, when compared to the total investment required, would result in a loss for the Applicant (see Profit and Loss Analysis, attached hereto as Exhibit E). Furthermore, considering the anticipated contingency budget, compliance with lot occupancy would make the project economically unviable. The Applicant will testify at the hearing that it does not seek "the most profitable use" for the Property but rather financing any improvement of the Property without a variance would be impracticable. *Russell v. District of Columbia Bd. of Zoning Adjustment*, 402 A.2d 1231, 1236 (D.C. 1979). Demolishing a portion of the building to comply with lot occupancy alone creates practical difficulties for the Applicant, and results in economic waste and economic hardship.

limitation on the utility of the existing structure or property, to satisfy the variance standard. Here, the economic harm has been outlined in detail by the Applicant and is tied to the limited utility of a damaged nonconforming structure and topographically challenging lot.

This financial hardship, in conjunction with the other unique aspects of the property, satisfies the first two prongs of the variance test.

C. Not Inconsistent with Zoning Regulations and Not Detrimental to Public Good

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 adequately balances the Zoning Regulations' goals of protecting existing properties and modernizing a property that has been boarded up since the November 2010 fire. 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. The Applicant attended the ANC 1D meeting on September 18, 2012, presented the project to the community and obtained a resolution in support of the Application.

In sum, strict application of the rear yard requirement, lot occupancy, and FAR requirements will create a practical difficulty for the Applicant. The damaged and deteriorated physical condition of the existing structure requires an unusually large expenditure to bring the structure to a marketable condition. The financial hardship, in conjunction with the other unique aspects of the property, constitutes a financial hardship that satisfies the first two prongs of the variance test.

Protrusion into Public Space

The Applicant is aware that a small, triangle-shaped segment of the existing structure at the rear of the Property protrudes into public space. The segment is approximately one foot by two feet. The Applicant's architect has started a dialogue with the District Department of Transportation's Public Space manager regarding a waiver to continue this encroachment (see email from James Killette regarding discussion with Bill Schoon, attached hereto as Exhibit G). The Architect has received positive feedback and the Applicant anticipates approval of the two foot projection.

Witnesses

The following witnesses will appear on behalf of the Applicant:

1. Mohommad Pishvaeian, on behalf of 3579 Warder Street, LLC
2. James Killette, Architect of Killette and Associates
3. Alan Dalton, Real Estate Agent of RE/MAX Allegiance

Conclusions

For the reasons stated above and for the reasons enumerated in the Applicant's prior filings in this case, we hereby submit that the application meets the requirements for an area variance relief. We look forward to presenting our case to the Board on November 27, 2012.

Sincerely,
GRIFFIN & MURPHY, LLP

By: Meridith H. Moldenhauer

Enclosures:
Advisory Neighborhood Commission 1D
Office of Planning, Stephen Cochran