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October 2, 2012

VIA HAND DELIVERY

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

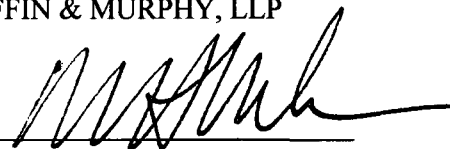
Re: Application No. 18441 – Supplemental Statement of the Applicant

Honorable Members of the Board:

The Applicant has retained our firm, Griffin & Murphy, LLP, to represent it in connection with the above stated application. Enclosed please find one original and twenty copies of the Applicant's supplemental submission in support of Application No. 18441 for (i) a variance pursuant to subsection 2001.3 relating to lot occupancy (§772.1) and rear yard (§774.1) requirements; (ii) a variance under §771.2 relating to floor-to-area ratio; and (iii) a variance pursuant to §2101.1 relating to parking to allow the applicant to convert a two-story retail/office building to a three-story structure with retail on the first story and multi-unit apartments on the second and third story, in the C-2-A District at premises 3616 14th Street, NW (Square 2689, Lot 0860).

Thank you for your attention to this application.

Sincerely,
GRIFFIN & MURPHY, LLP

By: 
Meridith H. Moldenhauer, Esq.

Enclosures

Cc: Stephen Gyor, Office of Planning (Via Email, with enclosure)
ANC 1A (Via U.S. Mail, with enclosure)

BOARD OF ZONING ADJUSTMENT
District of Columbia
Board of Zoning Adjustment
District of Columbia
CASE NO. 18441
CASE NO. 18443
EXHIBIT NO. 29
EXHIBIT NO. 29

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

**APPLICATION OF
3616 14th STREET LLC**

3
**BZA APPLICATION NO. 18441
HEARING DATE: November 13, 2012
ANC 1A**

SUPPLEMENTAL STATEMENT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of 3616 14th Street, LLC (the “Applicant”), the owner of property located at 3616 14th Street, N.W., Lot 860 in Square 2689 (the “Property”) in support of its application for (i) variances pursuant to §2001.3 relating to lot occupancy (§772.1) and rear yard (§774.1) requirements; (ii) a variance under §771.2 relating to floor-to-area ratio; and (iii) an area variance pursuant to §2101.1 relating to parking to allow the conversion of a two-story retail/office building to a three-story structure with retail on the first story and eight apartment units on the second and third story, in the C-2-A District.

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: Architectural Plans and Elevations;
- Exhibit D: Letter from Consultant Regarding Façade;
- Exhibit E: ANC Resolution in Support;

Exhibit F: Letters of Support from Neighbors;

Exhibit G: Outline of Testimony; and

Exhibit H: Letter of Authorization.

IV. BACKGROUND

A. Background Information Regarding the Site

The Property, also known as Lot 860 in Square 2689, contains approximately 2,400 square feet of land area. Square 2689 is bounded by 14th Street on the east, Perry Place NW on the south, Spring Place NW on the west, and Spring Road on the north (see Baist Atlas plats attached here to as Exhibit A). Square 2689 is split between an R-4 District, encompassing residential properties on the west two-thirds of the square and a C-2-A District, encompassing commercial properties on the easternmost one-third. The Property is located within the C-2-A District (see Zoning Map attached hereto as Exhibit B), and is located approximately 0.6 miles from the Colombia Heights Metrorail entrance and 0.5 miles from the Georgia Avenue Petworth Metrorail entrance. The Property is presently improved with retail on the first floor and office use on the second. The existing building has an FAR of 2.0. The Property has approximately 44 feet of frontage along 14th Street NW. The Property is not located within any historic district, and the existing building on the Property 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 C-2-A District that includes lots with frontage along 14th Street NW from Spring Place to the north to U Street to the south. To the west is an R-4 District containing primarily three-story attached residential dwellings. The adjacent Districts to the east and west of this C-2-A District are R-4, R-5-B, and R-5-E. Across 14th Street are commercial properties in the same C-2-A District with a large R-4 District containing mostly three-story attached residential buildings immediately to the east.

C. Description of the Traffic Conditions and Mass Transit Options 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 14th Street include routes, such as 52, 53, 54. Bus stops are located on the northwest and southeast corners of the intersection of 14th Street NW and Spring Road NW. In addition, a Capital Bikeshare Station is located at 14th Street and Spring Road, and a Zipcar space is located behind 1361 Parkwood Place, both of which are within walking distance of the Property. Moreover, the Property is located approximately 0.6 miles from the entrance to the Colombia Heights Metrorail station and 0.5 miles from the entrance to the Georgia Avenue Petworth Metrorail station.

D. Description of the Proposed Development

As shown on the architectural plans (see Architectural Plans and Elevations, attached hereto as Exhibit C),¹ the Applicant proposes to convert the existing structure from a two-story retail/office building to a three-story structure with retail on the first story and eight apartment units on the second and third story. The first floor will contain retail space with frontage on 14th Street and the layout will remain largely unchanged from that of the existing structure. The front windows will be repaired and replaced as necessary to improve the overall character of the building. The second and third floors will contain four units each, accessible by a common stairwell. Each of the eight units will be studio apartments with space for a bedroom, living area, kitchen and one bathroom. The Property will provide zero parking spaces and will have a height of approximately 34 feet.

While not designated as an historic structure, the building is considered “the most architecturally significant structure in the immediate vicinity” by the Applicant’s Architectural Conservator, Leigh Seyfert (see Letter from Consultant Regarding Façade, attached hereto as Exhibit D). The specific elements recognized include the “organization of the façade” and the “application of ornament.” The

¹ The plans attached are identical to those submitted with the initial application.

Architectural Conservator supported the reuse and adaptation incorporated into the proposed project by the Applicant. The Applicant, in conjunction with the Architectural Conservator's recommendation, does not believe that setback of the front façade of the building is necessary to maintain the character of the features of the building.

V. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from (i) §2001.3 relating to lot occupancy (§772.1) and rear yard (§774.1) requirements; (ii) §771.2 relating to floor-to-area ratio; and (iii) §2101.1 relating to parking. 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 Colombia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Colombia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Colombia 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. THE 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, and (2) the shape and size of the lot. 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 uniquely affected by the existing nonconforming structure located on the lot, which is currently at 100% lot occupancy and contains no rear yard. The only other lots on Square 2689 with 100% lot occupancy are lots 40, 859, 26, 27, 29, and 66. The remaining 27 lots in Square 2689 have less than 100% lot occupancy. Furthermore, in comparable lots fronting on 14th Street in the C-2-A District, from Shepherd Street south to Monroe Street, only 7% of those 141 lots are similarly affected by 100% lot occupancy. Thus, when evaluating the size of the lot and existing 100% lot occupancy with other commercial lots fronting on 14th Street, the Property is unique.

In addition, the configuration and shape of the lot presents a unique challenge for the Applicant. The majority of the lots along the commercial corridor of 14th Street are long and narrow providing the

opportunity to develop towards the rear of the lot without requiring the owner to develop vertically. This Property, on the other hand, is wider and shorter preventing the Applicant from developing in this manner. The combination of these factors results in an extraordinary and exceptional condition that imposes a number of significant development constraints on the Property.

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 nor create new nonconformity.

i. Lot Occupancy (§772.1)

Pursuant to §772.1 of the Zoning Regulations, the project is required to have a maximum lot occupancy of 60%. Both the existing and proposed structures have lot occupancies of 100%. 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 60% lot occupancy requirement would require the Applicant to tear down 40% of the existing structure. Such drastic measures would be wasteful and would make the project economically unfeasible. Therefore, the strict application of the lot occupancy requirement would cause a practical difficulty for the Applicant.

ii. Rear Yard (§774.1)

Pursuant to §774.1, the minimum depth of a rear yard in a C-2-A District is 15 feet. Both the existing and proposed structures have no rear yard. While the project does not increase, extend, or create new nonconformance with the rear yard requirement, in an abundance of caution, the Applicant has requested a variance with respect to the rear yard requirement. As 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. Therefore, strict application of the rear yard requirement would cause a practical difficulty for the Applicant.

2. Floor Area Ratio (§771.2)

Strict application of the FAR requirements in this case would result in a practical difficulty to the Applicant. Under §771.2, the C-2-A District permits a maximum density of 2.5 floor area ratio ("FAR"), of which no more than 1.5 FAR may be devoted to non-residential uses. The existing two-story building has an FAR of 2.0, all of which is attributable to non-residential use. The existing structure thus conforms to the total FAR requirement but exceeds the non-residential FAR requirement. The Applicant has proposed to use the first floor for retail and both the existing second floor and newly constructed third floor for residential use. Thus, the proposed structure, at 1.0 nonresidential FAR, brings the Property into conformity with the nonresidential FAR requirement but, at a total FAR to 2.83, exceeds the permitted total FAR by 0.33.

Relief from the FAR requirement is necessary for the Applicant to create functional and livable units in an economically viable way. It would be impractical to build a partial floor in order to strictly comply with the FAR requirement in light of the cost and square footage that must be attributed to extending the common stairwell. Spreading the costs associated with the common stairwell over four additional units is economically feasible while spreading that cost over only two units, while compliant with the FAR requirement, is not economically feasible.

3. Parking (§2101.1)

The strict application of the parking requirements in this case would result in a practical difficulty to the Applicant. Pursuant to §2101.1 of the Zoning Regulations, the proposed project is required to provide four parking spaces. The proposed structure will contain first floor retail and eight residential units. While no parking is required in a C-2-A District for retail or service establishments under 3000 square feet, a residential use in an C-2-A District is required to have one parking space for every two dwelling units. The proposed project will have eight dwelling units generating a parking requirement of four spaces. The proposed structure contains zero spaces. Thus, a variance has been requested.

Given the 100% lot occupancy and lack of a rear yard of the existing nonconforming structure, no area is available on the lot for the required parking spaces. In light of the existing nonconformities, it would be practically difficult and economically unviable to construct a below-grade garage to accommodate the additional parking. Partially demolishing the existing structure to provide parking on site would also be impracticable and wasteful, particularly because the area is well serviced by public transit. These resulting practical difficulties provide strong support for the requested variance relief from the parking requirement.

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

1. Nonconforming Structure

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 in connection with the existing nonconforming lot occupancy and rear yard. The proposed project adequately balances the Zoning Regulations' goals of protecting neighboring properties and modernizing a property to a more desirable use, as evidenced by the ANC's unanimous resolution in support of the Application (see ANC Resolution in Support, attached hereto as Exhibit E).

2. FAR

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 regarding FAR. The additional FAR will bring new life to an underutilized retail/office space by converting the Property to mixed-use retail/residential space in keeping with the neighboring development on 14th Street. The additional residential units add needed housing supply in the area and will create no detriment to the public good. As stated above, the ANC voted to support this application.

3. Parking

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. As discussed above, the Property is well-served by a number of public transportation facilities including various MetroBus routes, two Capital Bikeshare Stations, two Zipcar locations, and both Colombia Heights and Georgia Avenue Petworth Metrorail stations, all of which are within walking distance. Furthermore, the Applicant anticipates the eight apartment units will not generate a significant number of additional vehicles in the area. In the Applicant's experience, tenants in units of the size and projected rental price of those proposed here, and in such proximity to public transit options, do not commonly own vehicles and prefer public transportation. We submit that the proposed project adequately balances the Zoning Regulations' goals of ensuring adequate parking while encouraging walkability and mass transit and providing a diverse and adequate housing stock.

VII. WITNESSES

1. Ryan Samuel, on behalf of the Applicant
2. Hugo Roell, Architect on behalf of Roell Architects PC

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
Griffin & Murphy, LLP

By: _____


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