

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

RECEIVED
D.C. OFFICE OF ZONING

2013 JUL 12 AM 10:11

OPPOSITION BRIEF
OF RICHARD KLUGMAN

BZA APPLICATION NO: 18560
HEARING DATE: July 16, 2013

STATEMENT OF THE OPPONENT PARTY

I. NATURE OF RELIEF SOUGHT

This statement is submitted by Richard Klugman, owner of 3603 13th St NW and current resident of Columbia Heights. The Opposition contests the Applicant's request to convert a single family residence at 3545 13th St NW into a four unit apartment building in the R-4 District and requests the Board of Zoning Adjustment (hereafter the "BZA") to deny Applicant's variance relief from §401.3.

II. JURISDICTION OF THE BOARD

The BZA has jurisdiction to consider, and either grant or reject, the variance relief requested by the Applicant, pursuant to §3103.2 of the Zoning Regulations, in consideration of the three pronged test.

III. EXHIBITS IN OPPOSITION TO THE APPLICATION

Opposition submits its own Exhibits, in addition to using Applicant's own exhibit, as detailed below:

Opposition's Exhibit A: Comparative Real Estate Sales in Columbia Heights;

Opposition's Exhibit B: Protest Petition;

Applicant's Exhibit 9: Profit and Loss Analysis.

IV. BACKGROUND

A. Background Information On the Property

The Property is located at 3545 13th Street NW, lot 120 in Square 2833. It occupies 2936 square feet of land area and has alley access to the rear.

B. Description of the Surrounding Area

The Property is located on the east side of 13th Street NW between Otis Place and Monroe Street in the R-4 District. The Property was constructed in 1910 as a single family house and is located amidst a row of 16 detached properties, of which 14 are single family homes. There are no zoned four unit properties buildings amongst the cluster, nor are there any on the west side of 13th Street NW between Monroe Street And Otis Place.

C. Traffic Conditions in the Area

While Columbia Heights is well served by public transportation, the increase in local residents and neighborhood commerce has led to a dearth of legal parking spaces. As is often noted in ANC hearings, increased density in the neighborhood has also led to an increase in vehicles and a lack of parking spaces for the residents. This situation shall only intensify with the completion of the 25 unit condominium at 3511 13th Street NW.

D. Description of the Property

The Property is a standard pre-renovated home on 13th Street NW, as is the norm in this part of Columbia Heights. The Property is adjacent to 3547 13th Street NW, a single family home of the same size, footprint, original layout, and age of 3545 13th Street NW. The

neighboring property was renovated two years ago into a single family home with two units and gave positive results to the new owner, the developer, and the community.

V. NATURE OF RELIEVE SOUGHT AND STANDARD OF REVIEW

The Applicant seeks variance relief from §401.3 in order to turn a single family row-house into a four-unit condominium apartment building. The Opponent urges the BZA to reject this variance request and uphold the current R-4 zoning plan for the neighborhood Columbia Heights.

As is well repeated before the BZA, variance relief from lot area requirement §401.3 may be granted by the BZA under 11 DCMR §3103.2 *only* when the Applicant conclusively displays

- 1) there is an extraordinary or exceptional condition affecting the Property;
- 2) practical difficulties will occur if the zoning regulations are not strictly enforced; and
- 3) the requested relief “can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan...” (Palmer v. District of Columbia Board of Zoning Adjustment, 287 A. 2d 535, 538 (D.C. 1972)).

It is incumbent on the Applicant to satisfy all of the aforementioned prongs convincingly (Myrick v. District Board of Zoning Adjustment, 577 A. 2d 757, 760 (D.C. 1990)) for an exemption to the zoning regulations to be granted. As the BZA shall find in the Application, the burden has not been met, and the BZA should reject this request.

A. There is Nothing Extraordinary, Unusual, or Unique About the Property

The Applicant's collection of rationalizations for uniqueness do not equal one acceptable "extraordinary or exceptional condition affecting the property." A review of each such justification will show that standing alone, they are irrelevant to the question of "uniqueness", and collectively they fall far short of the test ("Property owner must present proof that the circumstances which create the hardship uniquely affect the petitioner's property...", see Capitol Hill Restoration Society, 534 A. 2d 942, quoting Taylor v. District of Columbia Board of Zoning Adjustment, 308 A. 2d 230, 234 (D.C. 1973)).

The Applicant argues that the Property's layout is not that of a residential unit and the staircase is an inconvenience for renovation. In fact, the reason the property layout does not align with a multi-unit apartment building layout is because it was built as a single family residence in 1910. The staircase in question was common for homes in Columbia Heights, as were the locations of the bedrooms. The current design is not unique to a property of this age, but rather standard for the era. While the Applicant has the right to convert this single family residence into a three unit condominium, the burden of rearranging the layout is solely the Applicant's and is in no way unique to his situation.

Applicant's third "unique" defense is the poor condition of the Property. There is nothing extraordinary about an 103 year old family home requiring complete renovation for conversion into a three unit condominium. Indeed, every house in the neighborhood that has not been properly cared for requires complete reconstruction. The Applicant provides no details as to the self-proscribed "physically deteriorated condition" other than his word. Accordingly, the BZA should not recognize the physical condition of the Property as "exceptional situation or

condition” without facts differentiating this 100 year old residence from every other 100 year old home in Washington D.C.

B. No Practical Difficulties Will Occur if Zoning Regulations are Strictly Enforced

The Applicant contends that strict enforcement of the lot area requirement of §401.3 (i.e., a three unit condominium complex) would provide a practical difficulty, and Applicant should be allowed to add a fourth unit to relieve this hardship. As the issue at hand is whether the earnings associated with a three condominium are too slim and can only be corrected by adding a fourth unit, it is necessary to review the figures provided by the Applicant to determine true hardship.

While renovation costs are difficult to estimate and even harder to control, the purchase price is completely under the influence of the Applicant. Under the Applicant’s self-generated profit and loss analysis, the purchase price is 35% of the total costs. The Applicant, an experienced developer with advanced knowledge of construction costs and zoning laws, knowingly outbid his competitors by a sizeable margin and purchased what has historically been a single family residence.

Applicant is free to pay whatever amount he chooses for the Property, and he also must be held accountable for that choice. In this action, he knowingly paid \$630,000 for a property he knew had the legal limit of three units. It is not the responsibility of the BZA, nor the onus of the neighbors, to allow for an exception to the R-4 zoning plan that contradicts the city plan and the wishes of the community. The Applicant is, at the very least, a contributing factor to his hardship.

The Applicant presents a lengthy dissertation that an economic hardship is reasonable grounds for a variance under §401.3, yet does little to actually prove the Property, as a three unit condominium, will not generate a fair and reasonable return on his investment. Applicant's sole proof of such is his own self-serving profit and loss analysis; no other real estate professionals, market research, or current property sales comparisons are used. A closer inspection of his report shall show significant inaccuracies and a baseless argument for financial hardship.

The profit and loss statement estimates abnormally low sales prices for the expected condominiums in the Columbia Heights market, specifically at \$425,000, \$500,000, and \$600,000. A search of comparable two bedroom condominiums in the neighborhood reflects significantly higher prices (see Opponent's Exhibit A). Indeed, one look no further that Applicant's own two bedroom condominiums at 3609 13th St NW for more honest figures. There the three two bedroom units sold for \$430,000 (\$489 per square foot), \$514,000 (\$634 per square foot), and \$562,000 (\$643 per square foot), respectively. It is only logical to assume then that the four units at 3545 13th St NW, with a larger lot, parking, and more square footage, shall be sold at equal or greater amounts in 2013. Hence, a more correct estimate of Applicant's estimated sales for a four unit condominium would be \$485,000, \$599,000, \$585,000, and \$649,000, leading to a net profit of \$547,798¹ after the listed investment.

When hypothesizing a three unit condominium at 3545 13th St NW, one could assume a layout of a two bedroom basement apartment, a two bedroom unit above, and a two level unit on the upper floors with three bedrooms. While not as common, a two level apartment at this location and built to Applicant's standards would fetch considerably more than \$600,000.² A comparison of three bedroom condominiums sold in Columbia Heights in comparable buildings

¹ Using Applicant's own sales price per square foot at 3609 13th Street NW

² \$600,000 for a 1921 square foot condominium equals nearly \$300 per square foot – several hundred less than Applicant's average.

shows an average square foot price of \$490 (see Opponent's Exhibit A). Hence, an honest projected sales price for a three unit complex at 3545 13th Street NW would be closer to \$485,000, \$599,000, and \$900,000, leading to a net profit of \$437,592³.

While a "fair and reasonable return on investment" is subjective, even the most aggressive of developers would not argue that a \$437,592 profit is unreasonable. Indeed, the Applicant himself only expected a profit of \$179,798 with a four unit condominium (see Applicant's profit and loss analysis).

Furthermore, Applicant's hypothesis that the irrelevant prior use of the property would diminish its likelihood of sale and renovation as a single family house is incorrect and a diversion from the issue. Applicant is well aware that numerous bids were made on the Property prior to his purchase, and whether or not they were from single family owners, it cannot be assumed by any stretch of the imagination that they would all have sought a variance from §401.3 to create a four unit apartment building. Consequently, the Applicant has failed to demonstrate the third prong of the variance test with any amount of objective validity.

C. A Variance Would Substantially Impair the Intent, Purpose, and Integrity of the Zone Plan.

The Application is clearly in contradiction to the R-4 zone plan, the wishes of the neighborhood, and the support of the ANC A-1. Section 330.3 states "The R-4 District shall not be an apartment house district as contemplated under the General Residence (R-5) Districts", yet this is exactly what the Applicant seeks to obtain once again. Public opinion on this matter is crystal clear; the neighborhood opposes the conversion of this residence into a four unit

³ Assuming the investment costs to be accurate.

condominium. This is evident by the more than 70 signatures of local residents in opposition (Opponent's Exhibit B), as well as the ANC A1 vote against the variance request not once, but twice. It should be noted that while Applicant did receive sparse local support, all adjacent neighbors oppose the motion.

Applicant's arguments for harmony with the zoning plan are thin, misleading, and incorrect. Obviously the requested variance is not in furtherance of the zoning plan as it increases density in the R-4 area beyond its intended amount. Regardless of whether the variance is granted, the Property shall be renovated by either the Applicant or one of the many other bidders, as there is a shortage of real estate properties in Columbia Heights. The remark regarding other "apartment structures on the square" is misleading as the four apartment buildings in question are 12 lots away from the Property, and the Property sits amongst 16 detached homes, none of which are legally zoned for four units. Additionally, the comments regarding housing shortage in Washington D.C. are disingenuous at best, as the Applicant's sales prices indicate he is less interested in housing the masses and more focused on catering to the highest clientele.

Contrary to the Applicant's conclusion, the proposed project shall most surely have a negative impact on the character of the neighborhood. Although a three unit condominium will increase density and reduce parking spaces, Applicant does have the right to construct such. He does not have the right, nor has he satisfied any of the prongs of §3103.2 to justify a zoning variance for an additional fourth unit.

VI. CONCLUSION

For the reasons stated above, the variance request does not meet the standards for variance relief under the zoning regulations and the BZA is urged to reject the application.

PROFIT AND LOSS ANALYSIS

3545 13th Street NW

RECEIVED
D.C. OFFICE OF ZONING

2013 JUL 12 AM 10:12

MATTER OF RIGHT PROJECT

3-Unit Apartment Building

\$630,000	Purchase Price
\$521,280	Renovation Hard Cost Estimate (3258 sq ft at \$160 per sq ft)
\$0	No New Structure
\$40,000	Fire Sprinkler
\$56,128	Condominium Warranty Bond (10% of Construction)
\$189,000	Sales Costs (12%: Agents Commission/DC Taxes, Condo Tax & Closing Help)
\$110,000	Soft Costs Estimate (Interest/Legal Fees/Architect Fees/Plans/Permits/Property Taxes/Insurance)
\$1,546,408	TOTAL INVESTMENT

\$1,575,000	PROJECTED SALE PRICE (\$425K + \$500K + \$600K)
\$28,592	NET PROFIT

PROPOSED PROJECT

4-UNIT APARTMENT BUILDING

\$630,000	Purchase Price
\$645,120	Renovation Hard Cost Estimate (4,032 sq. ft. at \$160 per sq. ft.)
\$38,700	New Construction (774 sq. ft. at additional \$50 per sq. ft.)
\$40,000	Fire Sprinkler
\$72,382	Condominium Warranty Bond (10% of Construction)
\$234,000	Sales Costs (12%: Agents Commission/DC Taxes, Condo Tax & Closing Help)
\$110,000	Soft Costs Estimate (Interest/Legal Fees/Architect Fees/Plans/Permits/Property Taxes/Insurance)
\$1,770,202	TOTAL INVESTMENT

\$1,950,000	PROJECTED SALE PRICE (\$425k, \$475k, \$500k, \$550k)
\$179,798	NET PROFIT

RECEIVED
D.C. OFFICE OF ZONING
2013 MAR 11 PM 2:04

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18560
EXHIBIT NO. 9

COMPARATIVE REAL ESTATE SALES FOR 2 and 3 BEDROOM CONDOMINIUMS IN COLUMBIA HEIGHTS¹

<u>ADDRESS</u>	<u>Square Footage (SF)</u>	<u>Price per SF</u>	<u>Price</u>
1323 Girard St NW #8 (3 bdrm)	1493	\$553	\$825,000
1339 Irving Pl NW PH (3bdrm)	1800	\$533	\$959,400
1339 Irving Pl NW Th (3 bdrm)	2600	\$385	\$1,001,000
1465 Columbia Rd NW # 401 (2 bdrm)	1016	\$566	\$575,000
1101 Fairmont St NW #5 (2bdrm)	766	\$560	\$428,000
1447 Girard St NW # 2 (2 bdrm)	850	\$553	\$470,050

¹ Source; Redfin.com

RECEIVED
D.C. OFFICE OF ZONING
2013 JUL 12 AM 10:11

We, the undersigned residents of Columbia Heights, urge the ANC 1A to oppose the variance request for Mohamed Pishvaeian, owner of 3545 13th St LLC, to convert 3545 13th St NW from a single family dwelling into a four unit condominium. This proposal represents a detriment to the neighborhood through increased density, reduced parking spaces, and further deterioration of the city's zoning plan for Columbia Heights. We wish our neighborhood to retain its single family character and feel that the development of 3545 13th St NW should not exceed its legal number of units solely for profit.

RECEIVED
D.C. OFFICE OF ZONING
2013 JUL 12 AM 10:12

NAME

ADDRESS

Ryan Hunter	1211 B Otis Pl NW DC
JORIS young	137 OTIS PLACE N.E
KATIE LEGOMSKY	1321 Otis Pl NW
Curtis Gilbert	1342 Otis Pl NW
Anthony Scott	1347 Otis Pl NW
Robert P. Kerner	1353 OTIS PL NW
Bob Carver Jr.	1357-OTIS PL, N.W.
HARVEY JAMES	1355 OTIS PL NW
Johnathan Lozier	3602 1/2 13th St NW
Ben Colbert	10 T, NW
Jillian Blazek	3585 13th St NW DC
Courtney Higginbotham	3585 13th St. NW DC
Bruce Faxon	3585 13 th St NW DC
Sharon Farmer	3601-11th St NW DC 20010
Joyce Williams	3601 11th NW 20010
	3634 11th St NW 20010

We, the undersigned residents of Columbia Heights, urge the ANC 1A to oppose the variance request for Mohamed Pishvaeian, owner of 3545 13th St LLC, to convert 3545 13th St NW from a single family dwelling into a four unit condominium. This proposal represents a detriment to the neighborhood through increased density, reduced parking spaces, and further deterioration of the city's zoning plan for Columbia Heights. We wish our neighborhood to retain its single family character and feel that the development of 3545 13th St NW should not exceed its legal number of units solely for profit.

NAME

ADDRESS

57

Debra & Dinmona 3541 13th St NW

Sharon Farmer 3601-11th St NW 20010

Joyce F. Wellman 3601 11th N.W 20010

Michael L. Neely 1505 HARVARD ST NW 20009

Libbie Buchele 1471 Harvard St NW 20009

David VanLeanen 1453 Harvard St. NW 20009

Dana Hubbard 1477 Harvard St NW 20009

RECEIVED
D.C. OFFICE OF ZONING
2013 JUL 12 AM 10:12

We, the undersigned residents of Columbia Heights, urge the ANC 1A to oppose the variance request for Mohamed Pishvaeian, owner of 3545 13th St LLC, to convert 3545 13th St NW from a single family dwelling into a four unit condominium. This proposal represents a detriment to the neighborhood through increased density, reduced parking spaces, and further deterioration of the city's zoning plan for Columbia Heights. We wish our neighborhood to retain its single family character and feel that the development of 3545 13th St NW should not exceed its legal number of units solely for profit.

RECEIVED
D.C. OFFICE OF ZONING
2013 JUL 12 AM 10:11

NAME

ADDRESS

	1211 OTIS PL. NW
	1211 OTIS PL NW
Tamika Payton	1215 OTIS PL. N.W. Wash, DC 20010
James Garner	1215 Otis Place 20010
	3570 11th NW WASH DC 20010
	3561 11th St 20010
	3561 11th St NW 20010
	3544 13th St. N.W.
	3526 13th St NW
	3526 13th St N.W.
	3526 13th St. N.W.
	3547 13th NW
WASHINGTON AMIK	3551 13th NW
Victor Sagrista	3527 13th St NW
Elli Whitcomb	3609 13th St. NW Unit 2
Pat Scott 21 Raggio	3609 13th St. NW
	3619 13th St NW
	3619 13th St NW
Byron S. Mc Nail	3543 13th St. N.W

We, the undersigned residents of Columbia Heights, urge the ANC 1A to oppose the variance request for Mohamed Pishvaeian, owner of 3545 13th St LLC, to convert 3545 13th St NW from a single family dwelling into a four unit condominium. This proposal represents a detriment to the neighborhood through increased density, reduced parking spaces, and further deterioration of the city's zoning plan for Columbia Heights. We wish our neighborhood to retain its single family character and feel that the development of 3545 13th St NW should not exceed its legal number of units solely for profit.

RECEIVED
D.C. OFFICE OF ZONING
2012 JUL 12 AM 10:12

NAME

ADDRESS

Theodore Cherry
M. A.

3607 13th Street NW

3541 13TH ST NW

Rick Nunno

3539 13th St NW

Atiya ATANI

3583 13th ST NW

Kobeshachew Emma

3580 13th ST. NW

Lamin Brown

3543 13TH ST. NW

John B.

3529 13th St NW

Dr. Telen Barry
M. A.

3521 12th ST. NW

3655 13th ST. NW

Karin Bencalet

3532 13th ST. NW

Kat Kling

3540 13th St. NW

Robt Church

3562 13th ST NW

William RILEY

3570 13th ST NW

Deborah Zell

3578 13th ST. NW

Richard Kligman

3603 13th ST NW

I. Vincent

1343 Meridian Pl, NW

E. Kellogg

3548 11th St. NW

Ray Dine

3552-11th St NW, WDC 20010

We, the undersigned residents of Columbia Heights, urge the ANC 1A to oppose the variance request for Mohamed Pishvaeian, owner of 3545 13th St LLC, to convert 3545 13th St NW from a single family dwelling into a four unit condominium. This proposal represents a detriment to the neighborhood through increased density, reduced parking spaces, and further deterioration of the city's zoning plan for Columbia Heights. We wish our neighborhood to retain its single family character and feel that the development of 3545 13th St NW should not exceed its legal number of units solely for profit.

RECEIVED
D.C. OFFICE OF ZONING
2013 JUL 12 AM 10:12

NAME

ADDRESS

Thomas Thompson	3608 11 th St N.W.
Geneine Kitchett	3574 11 th St NW DC
Amohan Smith	3616 11 th St NW DC
Alexis Rao	3616 11 th St NW DC
Nate & Milli Hansen	3603 11 th St NW DC
Leighton & Brendlyn Jones	3563 11 th St NW DC
LUCRECIA LEDESMA	3600 11 th St NW DC
Elizabeth Vazquez	3566 13 th St NW DC
Katherine Norberg	3531 13 th Street NW DC
Steph Lurinski	3585 13 th St NW DC
Samantha Seltzer	3629 13 th St. N.W.
William	3637 13 th St NW
Chavon & Erika Foster	3643 13 th St N.W.
Joe Moccia	3626 13 th St NW
Natasha Calderwood	3647 13 th St NW
Timothy Shea	3626 13 th St NW
Andrew Campbell	3651 13 th St NW
Renata Lana	3605 13 th St. NW