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July 2, 2013

Chairman Lloyd Jordan
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: Application No. 18562 – 1538 New Jersey Avenue NW (Square 510, Lot 53) Closing Statement of the Applicant

Chairman Jordan and Honorable Members of the Board:

On behalf of Applicant 1538 New Jersey Avenue, LLC, enclosed please find the Closing Statement for the above-referenced application. The Chairman left the record open for the Applicant to supplement the record and provide its Closing Statement in writing following the additional information and evidence being entered into the record. A decision date was scheduled by the Board of Zoning Adjustment (the "Board") for July 9, 2013.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

By: Meridith H Moldenhauer

Enclosures:

Cc: Advisory Neighborhood Commission 6E
c/o Rachelle P. Nigro, Chair (via email)
Single Member District Representative, Kevin Chapple (via email)
Arthur Jackson, Office of Planning (via email)
Cliff Moy, Board of Zoning Adjustment (via email)

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18562
EXHIBIT NO. 36

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION OF
1538 NEW JERSEY AVENUE, LLC

BZA APPLICATION NO. 18562
HEARING DATE: JUNE 11, 2013
DECISION DATE: JULY 9, 2013

CLOSING STATEMENT OF THE APPLICANT

The Applicant seeks to convert a church and residential unit to a multiunit apartment building in an R-4 District. Under §401.3, the conversion of a building or structure to an apartment house[1] in the R-4 District is permitted, but requires a minimum of 900 square feet of lot area per apartment unit. As indicated by the Supplemental Submission and Revised Plans attached thereto, the Applicant has reduced the size of the project from 7 units to 6 units. The revised plans do not change the building envelope of the proposed project and all other aspects of the project remain permitted as a matter-of-right. The modification does not impact the relief requested other than to greatly decrease the degree of deviation from the lot area requirement.

I. Exceptional Circumstance

As described in the prior submissions and at the hearing, the Applicant satisfies the three prong test for area variance relief. The Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the Property was previously used as a church; (2) the Property's history shows illegal construction and work without a permit; and (3) the existing structure lacks basic features and is in a dilapidated and deteriorated condition.

II. Practical Difficulty

In light of the extensive renovations necessitated by the history and physical condition of the Property, a six-unit structure is required for the project to be financially feasible. In this instance, the Applicant has demonstrated that without a variance the Property will not generate a fair and reasonable return on investment. It is not simply that compliance with the lot area requirement would produce less of

[1] Based on discussions with the Zoning Administrator, because 4 feet of the existing structure will be maintained the project is considered a "conversion" of an existing structure for zoning purposes.

a profit for the Applicant. Rather, *any* renovation of the existing structure that results in income from the rental of fewer than six units would result in an economically infeasible project.

The Applicant has prepared and provided a considerable amount of financial documentation to demonstrate the financial infeasibility of alternative uses at the Property. The Applicant does not rely on generalities but provides the Board with specific alternatives to analyze. These alternatives include a matter-of-right project (including a single-family home and flat), various alternative projects with fewer units (including a 3-unit structure and 5-unit structure), a comparison of condominium sales versus rental apartments as proposed, and a comparison of renovation of the existing structure versus partially demolishing and rebuilding of the structure.

As demonstrated by the various Profit & Loss Analyses, Construction Budgets, MRIS Comps, and a letter from real estate agent Andy Peers, a structure with fewer units would result in a financially infeasible project while the proposed 6-unit structure results in a reasonable return to the Applicant. *See Downtown Cluster of Congregations v. District of Columbia Bd. of Zoning Adjustment*, 675 A.2d 484 (D.C. 1996)(finding that an undue hardship existed because a tenant could not be located that offered a "reasonable rate of return to the owner"). In *Downtown Cluster*, the Court heard testimony and upheld variance relief based on financial infeasibility. The Court concluded that the 6% return the applicant could achieve as a matter of right was insufficient and the 9% return that would be achieved upon approval of the variance was a reasonable return. *Id.* at 487-89. Furthermore, the Board granted relief in *1444 Fairmont Partners, LLC* based on financial figures showing a 15% return, which the Board determined was a reasonable return. *See* BZA Case No. 18163-A, Transcript p.146. Based on all documentation provided to the Board, the Applicant seeks approval of 6-units showing a 6.24% return (which is 3.3% less as a result of the reduction in units).

We submit that the Applicant has fully demonstrated the financial infeasibility of a structure with fewer units in this location whether the units are rented or sold as condominiums. The sale of less than six units results in an unviable option due to the additional costs associated with conversion costs, commissions, and additional transfer and recordation taxes. The primary reasons for the relief requested stems from the necessity to remove the structurally unstable and dilapidated church, install all new electrical and plumbing, and upgrade finishes and amenities. The Applicant or any owner of this unique Property would encounter practical difficulty in complying with the Zoning Regulations. The Applicant has provided the Board with detailed proformas, construction budgets, MRIS comparables, and testimony by the Applicant regarding his intention to beautify and improve the Property.

For the reasons outlined above, strict application of the zoning regulations would result in a practical difficulty.

III. No Detriment to the Public Good or Zone Plan

Approval of the application will not cause detriment to the public good or be inconsistent with the Zone Plan. By removing the majority of a poorly constructed church and constructing a well-maintained, residential structure, the Applicant is replacing what is currently a detriment to the neighborhood with an asset to the nearby community. The Applicant has gone to extraordinary lengths to be a good neighbor in planning this project as evidenced by the full support of the community, unanimous vote in support from ANC 6E, and a number of letters in support, including one from Rose Carter who testified at the hearing to request additional information and is now an enthusiastic supporter.

I. CONCLUSION

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 the area variance relief requested.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

By: Meridith H Moldenhauer