

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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APPLICATION OF
1538 NEW JERSEY AVENUE, LLC

1538 NEW JERSEY AVENUE, NW
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STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of 1538 New Jersey Avenue, LLC (the "Applicant"), the owner of property located at 1538 New Jersey Avenue, NW, Lot 53 in Square 510 (the "Property") in support of its application for an area variance from the lot area requirement (§401.3) to allow the Applicant to convert a church and residential unit to a multi-unit apartment building in an R-4 District at the Property.

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. BACKGROUND

A. Background Information Regarding the Property

The Property, also known Lot 53 in Square 510, contains approximately 2,255 square feet of land area and is located in Northwest Washington, D.C. Square 510 is bounded by Q Street NW on the north, New Jersey Avenue, NW on the east, P Street NW on the south, and 5th Street on the west (see Baist Atlas plat, attached here to as Tab 8). The Property is located within walking distance of the Shaw and Mount Vernon Square/7th Street-Convention Center Metrorail stations. The Property is presently improved with a church on the first floor and an apartment on the second floor. The Property has approximately 20.6 feet of frontage along New Jersey Avenue 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.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18562
EXHIBIT NO. 4

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The Property currently provides zero parking spaces on site. Based on the prior use as a church, the Property has five parking credits (see Certificate of Occupancy, attached hereto as Tab 9). Pursuant to Section 2101.1, the proposed project requires two parking spaces. Due to the existing parking credits, no variance for parking is required.

B. Description of the Improvements in the Surrounding Area

The Property is located at the western end of Truxton Circle, just south of where Rhode Island NW meets Florida Avenue NW. To the northwest are the Shaw Metro and the Shaw/U-Street Corridor. Directly north, across the intersection of Rhode Island NW and Florida Avenue NW, is LeDroit Park and Howard University. Square 510 is located within an R-4 District (see Zoning Map, attached hereto as Tab 10). The majority of Square 510 is occupied by Montgomery Elementary School and Kipp DC. The remainder of the Square is made up of primarily of attached and semi-detached rowhouses, flats, and apartments. Across New Jersey Avenue, located in Square 510 E, is a series of four connected underutilized commercial establishments and a small undeveloped space that appears to be rented by a moving company for vehicle storage. New Jersey Avenue has four lanes, two in each direction, and is approximately 48.5 feet wide. Due to its substantial width, New Jersey Avenue supports a structure that is within the permitted height and is in keeping with the other properties on the block.

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 Metro, MetroBus routes, Capital Bikeshare, and Zipcars. The Property is located approximately 0.5 miles from the Shaw Metrorail entrance and 0.7 miles from the Mount Vernon Square/7th Street-Convention Center Metrorail entrance. Moreover, MetroBus route 96 stops at the intersection of New Jersey Avenue NW & Q Street NW. Additional MetroBus routes include the G8 which stops at the intersection of Rhode Island Avenue NW & New Jersey Avenue NW and the G2 which

stops at the intersection of Florida Avenue NW & 3rd Street NW. In addition, the Property is within close proximity to a number of the District's bikesharing and carsharing programs. Capital Bikeshare stations are located at 7th & R Street NW/Shaw Library (15 docks) and Florida Avenue & R Street NW (15 docks). Three Zipcar spaces are located within walking distance. Two Zipcar spaces are located behind 625 Rhode Island Avenue NW and an additional Zipcar space is located at the Shaw/Howard University Metro at 7th and R Street NW. Another local car-sharing program, Car2Go, has recently reported that the use of the company's car-sharing service had reached over 10,000 users and 6,000 trips per week.

D. Description of the Proposed Development

As shown on the architectural plans (see Architectural Plans and Elevations, attached hereto as Tab 11), the Applicant proposes to convert the Property from a church with a residential unit on the second story to a 3-story plus cellar apartment building with seven residential units. The existing building is in a dilapidated condition. The structure has been retrofitted as a church on the first floor and residential unit on the second. The current structure visually disrupts the block and creates an uneven flow in this residential area. The seven, one-bedroom residential units will revitalize and enliven the block and return the structure to a residential use as intended in the R-4 District. The cellar and first floor will each contain 1½ units, with Unit 2 being split between the cellar and first floor. The second and third floors will have two units each. The proposed design complements the architectural character of the neighborhood and replaces an awkward steeple structure with a structure that conforms to the existing rowhouse streetscape. The height of the structure will be 35.5 feet, which is permitted as a matter of right.

The proposed project is a conversion of an existing structure to an apartment house in an R-4 District. Under §403.2, the maximum percentage of lot occupancy for the conversion of a building to an apartment house in an R-4 District is the “[g]reater of 60% or the lot occupancy as of the date of conversion.” The existing lot occupancy, unchanged by the proposed project, is 63.7%. Thus, if the

Board grants approval to convert the structure to an apartment building, the lot occupancy as of the date of conversion will be the existing lot occupancy, 63.7%, and would be permitted. For this reason, no variance relief is required with respect to lot occupancy.

IV. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from the lot area requirement under §401.3. 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 Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also*, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. 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. District of Columbia 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. District of Columbia 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.

V. 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. District of Columbia Bd. 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. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Property is characterized 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 and (2) the existing structure lacks basic features and is in a deteriorated condition.

1. Layout due to Previous Use as a Church

The Property is currently encumbered by a church. The front façade of the original structure was retrofitted to appear like a church (see Photographs of Property, attached hereto as Tab 11). This front façade was poorly constructed, has been deficiently maintained, and is not compatible with any use other than a church. At present, there are two entrances at the front of the structure. One entrance is a double-door entrance to the large empty space serving as the church and the other is a separate door with steps leading up to the second-floor apartment unit above.

The presence of a church in an R-4 District on a lot intended for residential use is unique. There are a number of churches on larger lots in the nearby area, including the Second Church of God a few lots south. However, the church at the Property is on a lot intended for an attached dwelling. There are no

other churches on lots intended for attached dwellings in Square 510 and none in the immediate area other than the Church of the Living God at 1206 4th Street NW.

The building's existing configuration as a church makes its adaptive reuse of the Property for residential purposes extremely difficult and presents unique challenges in developing the Property. For this reason, the Applicant intends to raze the existing structure and build a rowhouse that visually conforms with the area. Razing the existing structure is extremely expensive; however, it is the only practical solution to develop a new residential use of any architectural or aesthetic value. Renovations of the existing façade and building are not financially feasible given the low quality and unmarketable appearance of the retrofitted building.

2. Lack of Basic Features and Deterioration of Existing Structure

A lack of basic features and the deteriorated condition of the existing structure present exceptional challenges for the Applicant. The first floor is a large, empty, dilapidated room and has no kitchen and no bathroom. Extending the plumbing and other needs associated with installing kitchen and bathroom facilities would require a large financial expenditure by the Applicant. Without demolition and redevelopment of the site into seven units the cost to return the structure to a residential use could not be recovered. Furthermore, the existing structure is in a deteriorated condition due to lack of maintenance by the prior owner of the Property. The rear yard is poorly maintained and is in a deplorable condition (see Photographs of Property, attached hereto as Tab 11).

Maintaining the existing structure exposes the Applicant to significant liability and exacerbates the exceptional condition at the Property. The existing structure has a unique history. The Church has a valid Certificate of Occupancy as a church issued October 25, 2007. Prior to that date, the Property was cited for illegal construction and construction compliance issues. Following issuance of the Certificate of Occupancy, the Property was cited for Trash and Debris, No Utilities, and Noise Violations. A notice of

violation was issued on January 13, 2010. Without architectural plans or proper permitting, the extent of possible unidentified building code violations and issues associated with illegal construction at the existing structure remain unknown. Thus, the liability associated with maintaining the existing structure or embarking on unknown rehabilitation require that it be razed and contributes to the exceptional condition of the Property.

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

Strict application of the zoning regulations with respect to lot area would result in a practical difficulty to the Applicant. Under §401.3, the conversion of a building or structure to an apartment house in the R-4 District is permitted, but requires a minimum of 900 square feet of lot area per apartment unit. In light of the extensive renovations required, a seven-unit structure is required for the project to be financially feasible. Thus, as demonstrated in more detail below, strict application of the zoning regulations, which would prevent any structure with more than two units, constitutes a practical difficulty for the Applicant.

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 Bd. of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992)(internal citations removed)(*Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990)(Reiterating in the context of an area variance that “increased expense and inconvenience to applicants for a variance are among the proper factors for BZA’s consideration.”). In *Association for Preservation of 1700 Block of N St., N.W. & Vicinity v. District of Columbia Bd. of Zoning Adjustment*, the Court confirmed that at a given point economic harm becomes sufficient, when coupled with a significant limitation on the utility of the existing structure or property, to satisfy the variance standard. 384 A.2d 674 (D.C. 1978)(Finding practical difficulty where a YMCA *could* build a structure that compiled with off-street parking requirements by reducing its size and

programming but was not economically feasible or cost-effective). In *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 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. 397 A.2d 936 (D.C. 1979)(Upholding approval of a lot area variance for conversion of a two-family dwelling to a three-unit apartment building where a two-family dwelling was not marketable and monthly expenses would out pace annual rental income). The Board of Zoning Adjustment has granted lot area variances from §401.3 based on economic feasibility grounds on a number of occasions.

In this instance, it is not simply that having fewer units would produce less of a profit for the Applicant. Rather, due to the exceptional circumstances at the Property described above, razing the existing structure and construction of a new structure is the best option for the neighborhood and the only practical option for the Applicant. *Any* renovation of the existing structure that results in rental income from fewer than seven units would result in an economically infeasible project (see Profit and Loss Analysis, attached hereto as Tab 12). The Applicant will testify, based on the attached Profit and Loss Analysis, that there is no economically feasible alternative for rehabilitation of this Property because compliance with the Zoning Regulations will result in a loss. Thus, a practical difficulty exists because the existing structure requires such a large investment that construction and renovation becomes feasible only with rental income from seven units.

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. With regard to the lot area variance, there will be little impact to residential density. The residential density on Square 510 is very low due to the presence of the Montgomery Elementary School and Kipp DC. Any disruption is further limited because a number of neighboring properties, like the proposed project, are also multi-unit

structures. The height, permitted as a matter of right, will match the neighboring property to the north. Furthermore, by removing 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. We submit that the proposed project adequately balances the Zoning Regulations' goals of protecting neighboring properties and modernizing a property to a more appropriate and more desirable use.

VI. WITNESSES

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

VII. 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,
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By: _____



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