

**SUPPLEMENTAL STATEMENT OF CONTINENTAL MORTGAGE & INVESTMENT
CORP. IN SUPPORT OF BZA APPLICATION #18613
FOR VARIANCE**

Re. District of Columbia Office of Zoning/Board of Zoning Adjustment ("BZA")
Continental Mortgage & Investment Corp ("CMIC")
Proposed Design for 12-Unit 3-floor Apartment Buildings
11 50th Street, S E Lot 0033 in Square 5331
4945 Ayers Place, S E Lot 0032 in Square 5331

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This Supplemental Statement is being provided pursuant to the September 24, 2013 hearing before the Board of Zoning Adjustment regarding the above-referenced matters and in accordance with the BZA's deadline to supplement the record before 12:00 p.m. on October 4, 2013.

I. Background

On May 31, 2013, CMIC submitted its application¹ for an area variance seeking relief from CDCR §§ 400.1 and 2001.03 for the above referenced properties. If granted, the variance would allow CMIC to renovate currently unusable vertical space on the top floor of each building and would also allow CMIC to diversify the mix of units in each building.² All work permitted by the variance would take place within the existing dimensions of the buildings, with no detriment to the public good and without compromising the integrity or intent of the zoning regulations or the zoning map.³

On September 24, 2013, a hearing in connection with CMIC's application occurred before the BZA. Present at the hearing for CMIC were Mark Walters, President of CMIC, Marc Feinstein of Miner Feinstein Architects, and Mark Crawford, counsel for CMIC.

Stephen Mordfin from the District of Columbia Office of Planning was also present. Mr. Mordfin testified in support of CMIC's application and elaborated on the rationale for the Office of Planning's September 17, 2013 Memorandum which recommended approval of CMIC's application.

During the hearing, the Board appeared supportive of CMIC's proposed renovations to the properties in general. The Board asked questions regarding the application of CDCR § 11-3103.2 in this instance as to the uniqueness of this property and the difficulties the owner will face if the variance is not granted. The Board did not render a decision on CMIC's application.

¹ BZA Application #18613

² Without the variance, the pre-existing dimensions of the buildings and a strict application of the zoning regulations would force CMIC to have 24 one-bedroom units in the buildings. The variance would allow CMIC to convert two units in each 12-unit building to two-bedrooms.

³ CMIC's proposed work is explained in greater detail in its original application for variance and attachments thereto.

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continued the hearing to October 8, 2013⁴, and set a deadline of 12 00 p m. on October 4, 2013 for CMIC to file this supplemental statement

II. Law

a. Variance Standard

The Board has the power, where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map D C Code § 6-641 07(g)(3)(2001), CDCR § 11-3103 2 (citations omitted)

Exceptional situation or exceptional condition [uniqueness] does not have to be inherent in the land at issue. The uniqueness may also arise from a *confluence of factors*. This confluence of factors must affect a single property and not the general conditions in the neighborhood. *Gilmartin v District of Columbia Bd of Zoning Adjustment*, 579 A.2d 1164, 1168 (D C 1990)(emphasis added) (D.C. Court of Appeals affirming BZA area variance based on an easement as meeting the uniqueness prong)

b. Area variance distinguished from use variance

Under, CDCR § 3103.4, an area variance is a request to deviate from an area requirement applicable to the zone district in which the property is located

An applicant for an area variance must prove that as a result of the attributes of a specific piece of property described in § 3103 2, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner CDCR § 11-3103 7

In order to prove that an applicant suffers from practical difficulties two elements must be proven: (1) the applicant must demonstrate that compliance with the area restriction would be unnecessarily burdensome; and (2) the practical difficulties are unique to the particular property. Economic use of property has been considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty. *Fleishman v District of Columbia Bd of Zoning Adjustment, et al*, 27 A 3d 554, 561-62 (D C 2011) (quoting *Gilmartin*, 579 A 2d at 1170)

III. Argument

⁴ CMIC has filed a request to reschedule the hearing to mid-November or later in order to allow additional time for the ANC to provide its position on CMIC's application and to accommodate the schedule of an additional witness, Ernest L. Marcus

a. A confluence of factors specifically affects 11 50th Street, S.E., and 4945 Ayers Place, S.E., to make the property unique with regard to being eligible for a variance.

In order for a variance to be granted under CDCR § 11-3103.2, an applicant must first establish that the property in question is unique “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property ” *Id.*

The uniqueness, that is, the exceptional situation or condition(s), does not have to be inherent in the land at issue. The uniqueness test may be met from a “confluence of factors.” However, these “confluence of factors” must affect a single property and not the general conditions in the neighborhood. *Gilmartin v District of Columbia Bd of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990)

The following factors specifically affect the properties on 11 50th Street S.E., and 4945 Ayers Place, S.E.

1. Both buildings are nonconforming apartment buildings located in a row-house zone.
2. According to the Office of Planning’s September 17, 2013 Memorandum to the BZA, the existing buildings were constructed in conformance with the Zoning Regulations in 1964 and became nonconforming when the properties were rezoned from an apartment zone⁵ to a row house zone⁶ in 2008.
3. Both buildings remained configured as twelve-unit, three story apartment buildings when the properties were rezoned to an R-3 zone in 2008.
4. Buildings in an R-3, row house zone are restricted to 40 feet and 3 stories. The variance will not cause the buildings to exceed that height.
5. At the time the properties were rezoned, the buildings contained vertical space that can be reconfigured to allow for the efficient use of square footage within the R-3 height restriction.
6. The buildings’ configuration and dimensions are unique to the property in question and not the neighborhood in general.
7. Without the variance, CMIC will be forced to have two 12-unit buildings that consist entirely of one-bedroom units. This is inconsistent with modern market demand, development practices, and contemporary standards. Without the variance, CMIC could

⁵ Apartment zones are designated as R-5-A

⁶ Row house zones are designated as R-3

only diversify the mix of units by (a) reconfiguring the floor plan of the existing units *and* reducing the total number of units within each building

CMIC submits that the confluence of these factors results in an extraordinary and exceptional situation and condition at the properties on 11 50th Street, S.E and 4945 Ayers Place, S.E , and, accordingly, meets the uniqueness prong of the variance test

b. The strict application of CDCR §§ 400.1 and 2001.03 would result in peculiar and exceptional practical difficulties for CMIC.

For an area variance to be granted, CMIC must further establish that as a result of the unique nature of the properties at 11 50th Street, S E and 4945 Ayers Place, S E , the strict application of §§ 400 1 and 2001 03 will result in peculiar and exceptional practical difficulties to CMIC

“In order to prove that an applicant suffers from exceptional and practical difficulties, two elements must be established 1) the applicant must demonstrate that compliance with the area restriction would be unnecessarily burdensome, and 2) the practical difficulties are unique to the particular property – Economic use of property has been considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in variance cases ” *Fleishman v District of Columbia Bd of Zoning Adjustment, et al* , 27 A 3d 554, 561-62 (D C. 2011) (quoting *Gilmartin*, 579 A 2d at 1170)

CMIC submits that the following will result should strict application of §§ 400 1 and 2001.3 be enforced on the properties on 11 50th Street, S.E. and 4945 Ayers Place, S E.

- 1) CMIC would lack the ability to productively use the top floor of both buildings to make four, two-bedroom units
- 2) Without the ability to add four, two-bedroom units, CMIC will be left with 24 one- bedroom units in a market demanding a mix of units
- 3) Any attempt to reconfigure the existing one-bedroom units on the lower floors of the buildings would result in additional expenditure of time and monetary resources
- 4) The reconfiguration of the existing one-bedroom units to two-bedroom units without losing the total number of units will result in small, unmarketable units
- 5) The reconfiguration of existing one-bedroom units to larger two-bedroom units will result in a loss of the total number of units overall
- 6) CMIC respectfully submits that it would constitute an undue burden and an exceptional practical difficulty to proceed with any of the alternatives that strict

application of the regulations would require when the requested variance would enable to CMIC to accommodate the two-bedroom units within the existing space in a manner that is consistent with modern development practices and market demands and which results in a better property.

c. Variance from § 400.1 and 2001.3 can be granted without substantial detriment to the public good.

CMIC must further establish that the variance from §§ 400 1 and 2001.3 will not result in the substantial detriment to the public good CMIC's proposed work following the grant of a variance will have no detrimental impact to the public good

To the contrary, the proposed work will.

- 1) Allow for a more efficient and economical use of previously vacant and blighted properties
- 2) Provide for a mix of overall housing in the area.
- 3) Not impact the traffic, noise, or lighting in the area
- 4) Be contained within the existing building structure and footprint

d. Variance from § 400.1 and 2001.3 can be granted without substantially impairing the intent, purpose, and integrity of the Zoning Regulations.

Finally, CMIC must establish that the variance from §§ 400 1 and 2001.3 will not substantially impair the intent, purpose, and integrity of the Zoning Regulations

CMIC's proposed work will fall within the intent, purpose, and integrity of the zoning regulations for the following reasons:

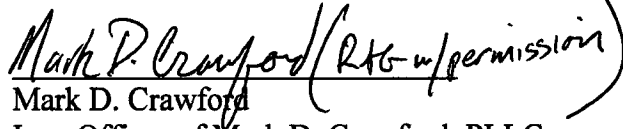
- 1) The proposal would not increase the number of total overall units to the buildings.
- 2) The proposal allows for the renovation and reuse of the existing structures
- 3) The proposal will not exceed the height restriction for an R-3 zone
- 4) The proposal will not increase the buildings' bulk beyond what the regulations permit

e. Conclusion

For all the foregoing reasons, CMIC respectfully asks that its request for a variance from § 400.1 and 2001 3 be granted.

Respectfully submitted,

Law Offices of Mark D Crawford, PLLC

Handwritten signature of Mark D. Crawford, followed by a large closing parenthesis symbol.)

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