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BOARD OF ZONING ADJUSTMENT
 District of Columbia

CASE NO. 18711EXHIBIT NO. 29

Executive Summary

Case No. 18711

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 2014 FEB 11 AM 11:01

Site Description

Address: 3112 13th Street, NW
Square/Lot: Sq. 2848, Lot 33

Zoning: R-4

Existing: Community Residence
 Facility for Persons with Mental
 Disabilities and 15 Staff Members

Historic District: NonePublic Transportation:

- Metro: Columbia Heights
- Metrobus Routes: H1, H2, H3, H4, H8
- Capital Bikeshare:
 - Park & Holmead. (19 docks)
 - 11th & Kenyon (27 docks)
 - 14th & Harvard (19 docks)
- Car Sharing:
 - Zipcar: 5 spaces
 - Car2Go

Cases:

- *Palmer v. D.C. BZA*
- *1700 Block v. D.C. BZA*
- *Tyler, et. al. v. D.C. BZA*
- *Wolf v. D.C. BZA*
- *Gilmartin v. D.C. BZA*

Project Description

Applicant	3112 13 th Street, LLC
Proposal	4-unit Condominium
Relief Sought	Lot Area (\$401.3) Nonconforming Structure/Court (\$2001.3) Off-Street Parking (\$2101.1)
Variance Standard	Exceptional Circumstance: Confluence of Factors • Prior use as CBRF for individuals with disabilities; • Substantial resources required to remove the nonresidential components of existing structure; • Existing layout is not that of a residential unit; and • Features that are not building code compliant. Strict Application Results in Practical Difficulty: • Economic infeasibility due to costly renovation. • Fewer than four units results in a loss or far less than a reasonable return. No Detriment to Public Good: • Returning CBRF with C of O for 15 staff members to residential use reduces density. • Provides four times more mechanical parking spaces than required by the Zoning Regulations.

Comments of District Agencies and Community:

- Attended January 8 ANC Meeting
- Awaiting Vote at February 12 ANC Meeting
- Voluntarily held January 27th Mechanical Parking Demonstration
- 40 Letters of Support from Neighbors

Board of Zoning Adjustment
 District of Columbia
 CASE NO. 18711
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LAW OFFICES
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February 11, 2014

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

Re: Application No. 18711 – 3112 13th Street NW (Square 2848, Lot 33)
Prehearing Statement of the Applicant

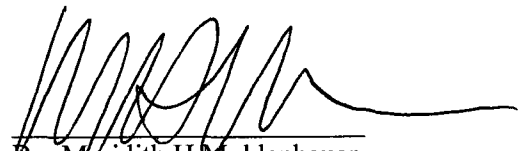
Chairman Lloyd Jordan and Honorable Members of the Board

On behalf of Applicant 3112 13th Street, LLC, enclosed please find the Prehearing Statement for the above-referenced application. The application is scheduled to be heard before the Board of Zoning Adjustment on February 25, 2014.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP


By. Meredith H Moldenhauer

Enclosures:

Cc: Advisory Neighborhood Commission 1A
c/o Thomas Boisvert, Chair and SMD Representative (via email)
Karen Thomas, Office of Planning (via email)
Cliff Moy, Board of Zoning Adjustment (via email)

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

**APPLICATION OF
3112 13TH STREET, LLC**

**BZA APPLICATION NO. 18711
HEARING DATE: FEBRUARY 25, 2014**

PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of 3112 13th Street, LLC (the “Applicant”), the owner of property located at 3112 13th Street NW (the “Property”), in support of its application for variance relief, pursuant to 11 DCMR §3103.2, from the lot area requirement (§401.3), the nonconforming structure requirements with respect to courts (§2001.3),¹ and the off-street parking requirement (§2101.1) to allow the Applicant to convert a community based residential facility (“CBRF”) to a multiunit residential building with four mechanical parking spaces in the R-4 District.²

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant the variance requested herein pursuant to §3103.2 of the Zoning Regulations.

III. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A: MRIS Comparables

Exhibit B: Beltsville Steel Fabricators, LLC Demolition Proposal

Exhibit C: Affordable Oil & Tank Removal of AST Proposal

Exhibit D: Updated Site Plan

Exhibit E: Mechanical Parking Diagrams

Exhibit F: Neighbor Letters in Support

¹ The Applicant hereby amends the application to include area variance relief with respect to existing nonconforming structures regarding the existing nonconforming court.

² The Applicant is not seeking relief for lot occupancy. However, the Applicant would like to clarify that the lot occupancy as of the date of conversion, including the mechanical parking structure, is proposed to be 61.9%. Under §403.2, the lot occupancy requirement in the R-4 Zone District for conversion of a building or structure to an apartment house is the “[g]reater of 60% or the lot occupancy as of the date of conversion.” Therefore, we submit that no lot occupancy relief is necessary.

IV. APPLICANT MEETS BURDEN OF PROOF FOR VARIANCE RELIEF

The Board is authorized to grant an area variance where it finds that the Applicant fulfills the three-prong area variance standard. As described in the initial application, supplemented in this Prehearing Statement, and as will be further explained at the public hearing, all three prongs of the area variance test are satisfied.

A. The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exceptional Situation or Condition.

The phrase “exceptional situation or condition” in the above-referenced 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). As stated in the Initial Application, 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 community residence facility for individuals with disabilities; (2) the Property requires substantial resources to remove the nonresidential components of the existing structure to accommodate the Community Residence Facility use; (3) the Property’s existing layout is not that of a residential unit; and (4) the Property has features that are not building code compliant.

B. Strict Application of the Zoning Regulations would Result in Practical Difficulty

The Applicant has discussed in great detail in the Initial Application the various ways that strict application of the Zoning Regulations would result in practical difficulty to the Applicant. The Applicant seeks only to further substantiate the record as to the exceptional situation and practical difficulty.

1. Lot Area

As a result of the exceptional circumstances, the Property will not generate a fair and reasonable return on investment without the requested variances. It is not simply that compliance with the lot area

requirement would produce less of a profit for the Applicant. Rather, *any* matter of right development at the site, and other alternative configurations reducing the zoning relief, would result in a financially infeasible project. This Prehearing Statement, and other information in the record, provides specific financial documentation demonstrating the financial feasibility of the proposed project as well as several alternative configurations at the Property rather than relying on generalities. See Profit & Loss Analysis, Initial Application at Tab 12. The Applicant further supports its financial feasibility analysis with MRIS Comparables. See Exhibit A.

As documented by the Profit and Loss Analysis and Construction Budget, there is no economically feasible alternative for rehabilitation of this Property because compliance with the Zoning Regulations will result in a loss. A 2-unit condominium results in loss of \$495,659 and a 3-unit condominium results in a loss of \$122,876. The 4-unit condominium proposed results in a return of only \$101,038 to the Applicant on a total investment of \$1.9 million.

The return on investment (ROI) for the proposed project is just under 5.2%, which does not meet typical lending standards necessary to obtain conventional financing. In this instance, the Applicant has tentatively secured conventional financing for the project, despite the small return shown, as a result of their over 20 year relationship with this particular lending institution, prior experience with community residence facilities, and a proven track record. The thin margins on this project are not typical for the real estate development industry. Here, the underlying purpose of this transaction stems from a desire to enhance a working relationship with CMS, the former owner and current community residence facility operator. The Applicant rents other buildings to CMS where CMS operates community residence facilities. CMS, the prior owner of the Property, sought to sell the Property and move to another location to better accommodate its aging population currently residing at the Property. The Applicant purchased the Property understanding the practical difficulty of converting the Property back to residential units and acknowledged that development of the Property, even with the zoning relief needed, would only yield a small return.

The primary driver of the financial infeasibility is that substantial base renovation costs must be completed regardless of the number of units. The base renovation costs, including interior demolition, exterior fire staircase removal, basement underpinning and structural support, oil tank removal, lead paint abatement, will cost roughly \$220,000 or nearly 33% of the total hard costs. The financial documentation already provided is supplemented with a staircase demolition proposal, *see* Beltsville Steel Fabricators, LLC Demolition Proposal at Exhibit B, and an oil tank removal proposal, *see* Affordable Oil & Tank Removal of AST Proposal, at Exhibit C. Base renovation costs make up a larger percentage of total hard costs when the structure has fewer units at roughly 39% of hard costs for a 3-unit structure and 45% for a 2-unit structure. *See Profit & Loss Analysis, Initial Application at Tab 12.* Because of the significant base renovation costs required to allow the structure to be used as a residential structure of any kind, the Applicant must spread those costs over the additional units requested to have a financially viable project.

Having a fourth unit, as shown in the financial documentation, is essential to preventing the project from resulting in an outright loss. Condensing the four units into the existing structure, whether by creating a small unit on the third floor or dividing the cellar or first story into two units, is also not a feasible alternative. A unit on the third floor, at only 18 feet wide by 30 feet long, would have only 495 square feet of livable space once a common corridor for unit access is provided. The sales price of that unit would drop to roughly \$278,000 based on sales comps in Columbia Heights. Division of the first or second floor into two separate units reduces the livable square footage to 434 square feet in the front unit and 504 square feet in the rear unit, again reducing those sales prices to roughly \$278,000. The decrease in sales prices far outweighs any reduction in construction costs from not having to build the addition. Furthermore, these alternative configurations result in added costs due to construction inefficiencies as the plumbing would no longer be stacked and access to each unit would no longer be uniform. These are not financially viable alternatives.

Based on the above, strict application of the zoning regulations at the Property constitutes a practical difficulty as a result of the financial infeasibility of developing a project as a matter of right or in a manner requiring less zoning relief than proposed.

2. Nonconforming Structure Requirements

The Applicant hereby amends the application to request relief from the nonconforming structure requirements with respect to courts pursuant to §2001.3. The minimum width of an open court in the R-4 District must be 4 inches per foot of height, but not less than 6 feet. 11 DCMR §406.1. The highest bounding wall, at 37'-6'', establishes a minimum court width requirement of 12'-6''.³ The existing court is 4'-0''. Thus, the existing court width is an existing nonconforming aspect that may continue. While the height of the highest bounding wall will remain at 37'-6'' and the court width will remain at 4'-0'', as a result of the third story renovation and addition the nonconforming court is being extended and thus, in an abundance of caution, the Applicant is requesting relief from the nonconforming structure requirements as they relate to the existing nonconforming court.

Because compliance with the nonconforming structure requirement would prevent reasonable use of the third story, strict application of the nonconforming structure requirement with respect to the court would result in a practical difficulty to the Applicant. As described above regarding lot area, extension of the third story is necessary to provide a marketable fourth unit and make the project financially viable.

3. Parking

Pursuant to §2101.1, a four-unit structure in the R-4 District has an off-street parking requirement of one space. In this instance, the Applicant is providing four mechanical parking spaces. *See Revised Site Plan at Exhibit D; see also Mechanical Parking Diagrams at Exhibit E.* At this time, the Zoning Regulations do not recognize mechanical parking spaces as legal spaces for purposes of meeting the off-

³ Court height is defined as "the vertical distance from the lowest level of the court to the highest point of any bounding wall." 11 DCMR §199.

street parking requirement. Thus, while providing four times the amount of parking required under the Zoning Regulations, the Applicant is requesting zoning relief from §2101.1 for the one space off-street parking requirement. The community initially had questions about noise caused by mechanical parking. However following a special community meeting and demonstration, the neighbors in attendance were very supportive of the additional parking being provided by the project.

C. No Detriment to Public Good or Inconsistency with Zone Plan

Approval of the application will not cause detriment to the public good or be inconsistent with the Zone Plan. The zoning relief with regard to lot area will permit renovation of a structure previously used as a community residence facility, bringing it up to commercial market standards and returning it to residential use while allowing for an economically viable structure. With a Certificate of Occupancy for 8 individuals with disabilities, as well as 15 staff members, returning the structure to residential use will drastically reduce the number of people at the Property on a daily basis.

By providing four mechanical parking spaces, the Applicant is providing four times the parking required under the Zoning Regulations. This will help alleviate parking concerns of neighboring Columbia Heights residents. The Applicant coordinated a meeting with the community on January 27th to demonstrate how mechanical parking works. Turnout was good and feedback was very positive about the benefit installation of the mechanical parking system would have.

The Applicant attended an ANC meeting on January 8 to present the project to the community. The community was supportive of the project and the discussion centered on the details regarding operation of the mechanical parking. The Applicant is scheduled to return to the ANC on February 12, one day after this filing, for a vote. The Applicant has received a substantial amount of support from the community. The Applicant has obtained 40 Letters of Support for the project, including both adjacent neighbors and 6 Neighbors from the 3100 Block of 13th Street NW. The Applicant has also received support from the Church of Christ at 3100 13th Street NW. See Letters of Support at Exhibit F.

Therefore, the Applicant reiterates that the application will have a positive impact on the public good and will be consistent with the Zone Plan.

V. WITNESSES

The following witnesses will appear on behalf of the Applicant:

1. Ulysses Glee, on behalf of the Applicant; and
2. Kristine Adey, on behalf of the Applicant.

VI. 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 area variance relief. We look forward to presenting our case to the Board on February 25, 2013.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

A handwritten signature in black ink, appearing to read 'M. H. Moldenhauer', written over a horizontal line.

By: Meridith H Moldenhauer