

March 4, 2014

HAND DELIVERY

Lloyd Jordan, Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, NW, Suite 200 South
Washington, DC 20001

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18731

EXHIBIT NO. 25

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Re: Case No. 18731: Pre-Hearing Statement and Amended Application for Variance Relief

Dear Chairperson Jordan:

Enclosed herein are supplemental materials in support of the above-referenced application. The Applicant is seeking special exception relief for residential use in the R-5-A Zone District, variance relief from the parking and loading requirements for Parcel 1 and variance relief from the drive aisle requirements on Parcel 3. Attached are the following materials:

- Updated plans (Exhibit A);
- Outlines of witness testimony and expert resumes (Exhibit B); and
- Transportation analysis (Exhibit C).

The Applicant will have two witnesses testifying on its behalf at the public hearing: Jim Edmondson, a representative of Horizon Hill Ventures, and Jeffrey Kozero, an expert in architecture and engineering.

In addition to the areas of relief outlined above, the Applicant also hereby amends its application to include variance relief from the limitation on the number of stories permitted in the R-5-A Zone District for both Parcels 1 and 3. Since filing its application with the BZA, the Applicant, in consultation with the Zoning Administrator, has determined that the proposed work will also require relief from Section 400.1 and the limitation on the number of stories permitted in the R-5-A Zone District.¹

The R-5-A Zone District imposes a height limit of 40 feet with no more than three stories. The proposed project will be no taller than 40 feet; however, the Applicant is proposing a third-story duplex, which may qualify as a fourth story. The existing buildings on Parcels 1

¹ The Zoning Administrator has taken this issue under advisement, but has not ruled on it.

and 3 are currently three stories in height, with a step down to two stories along 13th Street. The Applicant is proposing to provide a uniform height of 40 feet for each building. The third story addition, however, will be comprised of a duplex unit and the interior of the duplex unit will consist of two floors. While we believe there to be a distinction between floors and stories, we would like to amend our application to include a request for variance relief from the limitation on the number of stories permitted in the R-5-A Zone District, out of an abundance of caution.² As set forth below, we believe that this application meets the variance standard for the requested relief.

A. The Property is affected by an Exceptional Situation or Condition

As stated in the original application with regard to the requested parking variance, the same condition exists, as a legal matter, for the buildings' heights. As previously noted in the original application, the Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. In Monaco, the Court noted that the previously constructed buildings on a property support the property's uniqueness. Furthermore, the Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a "confluence of factors." Id. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

Here, like in Gilmartin, there are a series of factors that contribute to the uniqueness of the Property. The Property is improved with existing buildings, which the Applicant intends to keep in place. The existing buildings were initially constructed in 1947 and were renovated in 1988. When Parcels 1 and 3 were constructed, they were built with a "u" shaped site plan. When the buildings were renovated in the 1980s, the owner eliminated all one-bedroom units and constructed only two and three bedroom units. The three buildings included a total of 56 two-bedroom units and 9 three-bedroom units. Given the "u" shaped site plan, the units were essentially "through" units, meaning that each unit extended from one side of the arm to the other.

Tenants today have very different spatial needs and desires and smaller units are in fact favored. Tenants prefer living alone and in smaller units. Accordingly, the Applicant is renovating the buildings to change the mix of units as well as increasing the unit count. The two-

² The Zoning Regulations define "story" as "the space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing." We maintain that there is a strong argument that the duplex is only one story, rather than two stories because it is between the top floor and the underside of the roof framing.

bedroom count will actually increase from 56 to 64 units, but the percentage of two-bedroom units will decrease to 58%. The Applicant will also reconfigure the floor plans to yield 38 studio and one-bedroom units. The Applicant does not want to eliminate the opportunity for families to live in the buildings.

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

The requested relief is for an area variance, and the appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ Increased expense and inconvenience to applicant for a variance are among the factors for BZA’s consideration.” Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” Gilmartin, 579 A.2d at 1171.

Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible. Here, the Applicant meets this standard. In the first prong of the variance test, the Applicant demonstrated that it was constrained by the existing buildings and the unit mixes provided in the buildings. The existing site plan very much favors deep, two bedroom units; however, that is not what the market favors. Accordingly, the Applicant is attempting to accommodate the needs of the market within the constraints of the existing building. Each arm of “u” shaped building allows for very big units, such as the “through” units that currently exist. The only way to reduce the unit size is to split the “through” units into two separate units. While typical floor plans allow for a variety of manipulations to arrive at the desired unit size, the width of the existing “arm” severely limits the flexibility of the floor plan. Accordingly, the Applicant is very much limited in how it can convert the existing two and three-bedroom units into one bedroom units and studios.

Further, because the Applicant cannot expand “out” to provide the additional two-bedroom units, it must expand “up”. Thus, the Applicant is providing the two-bedroom units primarily by way of duplex units. The third floor will house duplex units primarily for two bedroom units.

C. Relief Can Be Granted without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

The requested variance relief can be granted without impairing the intent, purpose and integrity of the Zone Plan. In fact, the third floor duplex units will accommodate families, enabling existing tenants to remain and attracting new tenants to the property. This project includes a significant affordable aspect. The Department of Housing and Community Development gives a high priority in the award of capital subsidies for affordable housing to projects that provide affordable two-bedroom units. As noted above, the preference today is for smaller units, thus many new projects forego providing two-bedroom units. Consequently, this results in a dearth of affordable two-bedroom units, depriving many families of affordable options. Allowing the duplex units will help fill this void. Importantly, there is no impact from providing the duplex units, as the maximum height of the buildings does not exceed the maximum height permitted in this zone. Further, the duplex units will provide a unique and appealing living arrangement for families with affordable housing incomes.

Community Outreach

The ANC meeting was re-scheduled until March 10 due to a snow storm. The Applicant has been in touch with the ANC and will present this project at the public meeting on March 10.

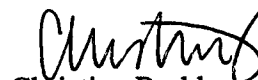
Conclusion

The Applicant asks that the Board accept this amendment to the application and the proffered materials in support of the application. It notes that the project is currently noticed for variance relief, putting neighbors on notice of the need for such relief. Further, we have included the amended request for relief on the placards used to post the property, as well as during our presentation to the ANC.

Sincerely,



Phil Feola



Christine Roddy

cc: Josh Dworken
James Edmondson

Certificate of Service

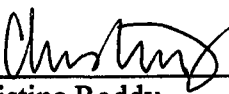
I hereby certify that a copy of the enclosed document was delivered by hand or by first-class mail on March 4, 2014, to each of the addresses below:

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Christine Roddy