LAW OFFICES
GRIFFIN, MURPHY, MOLDENHAUER & WIGGINS, LLP

MARK G. GRIFFIN (DC, MD)
BRIAN P. MURPHY (DC, MD)
ASHLEY E. WIGGINS (DC, MD, VA)
MERIDITH H. MOLDENHAUER (DC, MD, VA)
ERIC M. DANIEL (MD, DC)

DIRECT DIAL: 202-530-1482
DIRECT EMAIL: MMOLDENHAUER@WASHLAW.COM

Executive Summary

Case No. 18794

Site Description

Address: 1740 New Jersey Ave NW
Square/Lot: Sq. 508N, Lot 9

Zoning: R-4

Existing: Vacant Nonconforming Structure

Historic District: None

Public Transportation:

- Metro: Shaw
- Metrobus Routes: 90, 92, 93, 96, X3, G8, 96, 70, 79
- Capital Bikeshare:
  - New Jersey & R St (15 docks)
- Car Sharing:
  - Zipcar
  - Car2Go

Cases:

- *Palmer*
- *Clerics of St. Viator, Inc.*
- *Gilmartin*
- *Tyler*
- *1700 Block of N. St.*

Project Description

Applicant	Newton St Development 3 LLC
Proposal	7-unit Dwelling
Relief Sought	Lot area (401.3); Nonconforming Structures (2001.3); and Parking (2101.1)
Variance Standard	**Exceptional Circumstance**: Confluence of Factors • Unique size, shape, and existing 100% lot occupancy • At intersection of RI Ave, Fla. Ave, and NJ Ave • Extensive flood damage • Unique title issues and history of Property • Dilapidated condition due, in part, to extended vacancy **Strict Application Results in Practical Difficulty**: • Matter of right, two-unit structure would result in large, unmarketable units • Conversion to two residential units would result in awkward layouts with inefficient and wasteful use of space and a lack of adequate light and air. • 100% lot occupancy leaves no space for on-site parking **No Detriment to Public Good**: • Renovating and rehabilitating a long-vacant structure at a key entryway into the neighborhood • Putting unused, dilapidated structure to productive use • Extensive parking demand mitigation package • Preservation of unique architectural features

Comments of District Agencies and Community:

- Recommendation of Support from ANC6E and Zoning Committee
- 20 letters of support, including the adjacent neighbor

Board of Zoning Adjustment
District of Columbia
CASE NO.18794
EXHIBIT NO.30

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September 2, 2014

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

Re: Application No. 18794 – 1740 New Jersey Avenue NW
Prehearing Statement of the Applicant

Chairperson Lloyd Jordan and Honorable Members of the Board:

On behalf of the Applicant, Newton St Development 3 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 September 16, 2014.[1]

In response to feedback from the ANC and neighboring property owners, the Applicant has revised the plans to reduce the proposed project to 7 units. While the degree of relief has been decreased, the areas of relief identified remain the same.

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 Alexander Padro, Chair (via email)
Single Member District 6E02 Representative, Kevin Chapelle (via email)
Office of Planning (via email)
Cliff Moy, Board of Zoning Adjustment (via email)

[1] The Applicant's hearing was initially scheduled to be heard on July 15, 2014. The Applicant requested a postponement to revise the Architectural Plans and address comments and feedback obtained during the community outreach period.

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION OF	**BZA CASE NO. 18794**
NEWTON ST DEVELOPMENT 3 LLC	**HEARING DATE: SEPTEMBER 16, 2014**

PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Newton St Development 3 LLC (the "Applicant"), the owner of property located at 1740 New Jersey Avenue NW, Lot 9 in Square 508N (the "Property") in support of its application for an area variance from the zoning regulations regarding lot area (§401.3), nonconforming structures (§2001.3), and parking (§2101.1) to allow the Applicant to renovate and convert a vacant nonconforming corner building to a multiunit dwelling in an R-4 District at the Property. In response to feedback from the ANC and neighboring property owners, the Applicant has revised the plans to reduce the proposed project to 7 units. See Revised Architectural Plans at Exhibit A. While the degree of relief has been decreased, the areas of relief identified in the Initial Application remain the same.

II. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A: Revised Architectural Plans
Exhibit B: Photograph of Water Damage & Line Showing Watermark
Exhibit C: Photograph of Complex Intersection
Exhibit D: Profit and Loss Analysis and Construction Budget
Exhibit E: MRIS Comparables
Exhibit F: Letter from Real Estate Agent
Exhibit G: Letter from Four Points, LLC
Exhibit H: Additional Public Street Parking Diagram
Exhibit I: Neighbor Letters of Support

III. 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 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 described 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 size and shape of the Property and configuration of the existing structure; (2) the location of the Property at the intersection of Rhode Island Avenue NW, Florida Avenue NW, and New Jersey Avenue NW; (3) the extensive flood damage to the existing structure; (4) the existing nonconforming aspects of the Property; (5) the title issues and history of the Property; (6) the existing dilapidated condition of the Property due, in part, to the extended vacancy; and (7) the orientation and layout of the existing structure.

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

Strict application of the zoning regulations with respect to lot area (§401.3), nonconforming structures (§2001.3), and parking (§2101.1) would result in a practical difficulty to the Applicant.

1. Lot area (§401.3)

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. This is particularly the case due to three existing entryways into the existing structure. Creation of fewer units would result in awkward layouts as well as inefficient ingress and egress into the units.

Furthermore, significant renovation is required to resolve issues such as water damage and excessive property damage. At the time of acquisition, a portion of the basement was flooded with standing water. *See* Photograph of Water Line at Exhibit B. The presence of standing water necessitates removing rotting wood, drywall, and insulation to prepare damage already done. To prevent future damage, atypical and costly precautions must be taken to retrofit the structure including potential use of flood-damage-resistant materials, vapor barriers, a French drain, and other costly measures. There are also additional costs, no matter the number of units, as a result of the required closing of two existing curb cuts in public spaces. The substantial renovations required, in addition to the location of the Property on a complex and pedestrian unfriendly corner, make rehabilitation of the home to a single-family home or flat extremely unlikely. *See* Photograph of Complex Intersection at Exhibit C. This is demonstrated, in part, by the extended vacancy at the Property.

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.").[2] The Board of Zoning Adjustment has granted lot area variances from §401.3 based on financial feasibility grounds on several occasions.

[2] 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

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 *any* renovation of the existing structure that results in fewer than seven units would result in an economically infeasible project. The Revised Architectural Plans, at Exhibit A, reflect the reduction from eight to seven units, which creates extremely narrow margins for the project.

The primary driver of the financial infeasibility is that substantial base renovation costs must be completed regardless of the number of units. In this instance, the base renovation costs include, but are not limited to, site cleanup, removal of obsolete and nonfunctional equipment, remediation and prevention of water damage, excavation and earthwork, foundation, and roofing. The Applicant was faced with standing water in the cellar, severe water damage, mold, and roof damage all of which contribute substantially to the base renovation costs.

Base renovation costs make up a larger percentage of total hard costs when the structure has fewer units. 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. The additional units are necessary whether sold as condominiums or rented as apartments, *see* Profit and Loss Analysis and Construction Budget at Exhibit D and MRIS Comparables at Exhibit E. Based on current rental conditions, the apartment alternative is not viable and the Applicant anticipates a condominium project unless market conditions change. Larger units or a renovation as a single-family home or flat will not be marketable. *See* Letter from Real Estate Agent at Exhibit F.

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 Applicant has provided extensive financial information regarding the feasibility of various alternatives, including in the context of both condominium sales and apartment rentals. Condominium sales have increased costs associated with the need to provide higher quality interior finishes, kitchen and bathrooms, appliances, HVAC system, and MEP system. The proposed seven unit design provides cost savings, even compared to the five unit scenario, because no private entrance is being built on Rhode Island Ave. Also note that construction costs have increased as a result of the increase in the number of real estate developments taking place in the city and the difficulty in finding contractors who are increasingly in demand within the District.

The deviation from the lot area requirement requested is not dissimilar to several others in the R-4 district approved by this Board:

BZA No.	**Address**	**No. of Units**	**Lot Area (Sq. Ft.)**	**Lot Area per Unit (Sq. Ft.)**	**Decision Date**
18794	1740 New Jersey Ave, NW	7	1685	211	
18515	200 5th Street, SE	6	1101	184	3/12/2013
18055	304 Q Street, NW	4	896	224	4/20/2010
18562	1538 New Jersey Avenue, NW	6	2255	376	7/9/2013
18724	819 D Street, NE	30	11458	382	3/11/2014
14527	1000 East Capitol Street, NE	8	1649	206	2/4/1987
18800	625 Park Road, NW	38	16654	438	7/22/2014
14712	501 E Street, SE	19	7657	403	1/6/1988
13582	301 G Street, NW	27	9125	338	3/3/1982

The Applicant will testify, based on the Profit and Loss Analysis and Construction Budget provided, that there is no economically feasible alternative for rehabilitation of this Property because compliance with the Zoning Regulations will result in a loss. Providing fewer units would result in excessively large units with inefficient layouts. Larger units would not obtain a much greater price due to the unique location on a major intersection across from several gas stations. Thus, a practical difficulty exists because the existing structure requires such a large investment that renovation becomes feasible only with seven units.

2. Nonconforming Structure Requirements (§2001.3)

The proposed project requires relief from the nonconforming structure requirements. As described above, the structure is nonconforming with respect to lot occupancy and lot area and has an existing nonconforming court. Section 2001.3 allows enlargements and additions to an existing nonconforming structure. However, for the enlargement to be permitted (a) the structure must conform to lot occupancy and (b) the enlargement itself must conform to the use and structure requirements and neither increase the degree of nonconformity or create a new nonconformity. Therefore, strict application of the zoning regulations would prevent the Applicant from allowing the third story. The third story is compliant as to the height permitted in an R-4 zone. Furthermore, the Applicant has designed the third story with an extended mansard roof in keeping with the character of the original building. As stated, the two additional units on the third story are essential to the financial feasibility of the project.

3. Parking Requirement (§2101.1)

The parking requirement in the R-4 District is 1 space for every 3 dwelling units. Thus, the parking requirement for the proposed project is 3 spaces. The Property currently has 0 parking spaces. Parking relief is therefore required.

With respect to parking, the Applicant will implement the following Parking Demand Mitigation ("PDM") measures to promote the use of alternative modes of transportation and limit any impacts on parking availability as a result of the parking relief requested:

- Lease 4 parking spaces from a nearby parking garage and make them available to resdients at the Property, *see* Letter from Four Points, LLC at Exhibit G;

- Restrict residents from obtaining a Residential Parking Permit (RPP);
- Restrict residents from obtaining a Visitor Parking Pass (VPP);
- Provide the first occupant of each residential unit a $100 car sharing membership, or a $150 Capital Bikeshare membership, or a $200 *Smart Trip* card;
- Work with DDOT to close existing nonconforming curbcuts, which provides addition public street parking space on Rhode Island Ave as well as additional space for parking on S St NW. *See* Additional Public Street Parking Diagram at Exhibit H.
- Provide 7 covered and secure bicycle spaces in the building; and
- Provide space for a Capital Bikeshare Dock if and when more Capital Bikeshare Docks can be installed.[3]

Strict application of the 3 space parking requirement would result in a practical difficulty, as it is impractical to provide the spaces at grade or through underground parking. Based on the 100% lot occupancy of the existing structure, providing the three spaces at grade would require demolition of a substantial portion of the existing structure. Furthermore, there are no curb cuts on the lot to allow access for vehicles onto the Property or below the existing structure. Based on two formal meetings with DDOT representatives, no new curb cut would be permitted. The publicly owned space to the east of the Property along New Jersey Avenue has two nonconforming curb cuts connected by a driveway. DDOT confirmed that the driveway must be closed to create new public curbside parking space on Rhode Island Avenue and additional space for parking along S Street NW. The closing of these curb cuts were not initially anticipated by the Applicant and increase the project costs for all alternatives.

Therefore, strict application of the parking requirement would result in a practical difficulty to the Applicant.

B. No Substantial Detriment to Public Good or Inconsistency with Zone Plan

Granting the variance relief requested would not cause a substantial detriment to the public good or impair the intent, purpose, and integrity of the zone plan. The proposed project renovates a vacant,

[3] Due to financial issues associated with the company that operates Capital Bikeshare, Capitol Bikeshare cannot commit to installing new docks at this time.

single-family home as a residential structure. Furthermore, the footprint of the existing structure will be left unchanged. In addition, the proposed project adequately balances the zoning regulations' goals of ensuring adequate space for residents, providing a diverse and adequate housing stock, and permitting property owners to create marketable units. The additional residential units also help address the well documented shortage of housing in the Washington D.C. area.[4]

The Property is located on a prominent corner and serves as a gateway into the Shaw neighborhood. The height and massing of the proposed project are compatible with the location of the Property at the intersection of three wide avenues including Florida Avenue, New Jersey Avenue, and Rhode Island Avenue. Across Rhode Island are two gas stations on either side of New Jersey Avenue. Across New Jersey Avenue from the Property is a complex intersection where Rhode Island, New Jersey Avenue, and Florida Avenue form a triangle. A US Post Office structure is located at the center of the triangle. The proposed project, though not in a historic district, uses high quality materials and thoughtful design to both match the defining architectural features of the existing building and compliment the character of the surrounding properties.

Due to the accessibility of the Property, including an extremely high walkscore as well as access to two metro stations, several bus routes, carsharing and bikesharing options, variance relief for three spaces will not have a substantial impact. The Applicant will implement the PDM measures described above, including leasing nearby parking spaces offsite for residents, restricting RPP, and providing several incentives to promote the use of non-automotive transportation. Furthermore, the availability of a variety of transportation options, particularly carsharing and proximity to the Metro, as well as demographic changes in Shaw, reduces the need for residents to own a vehicle. The Transportation

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[4] Over the next 20 years the Washington metropolitan area will need 700,000 new housing units by 2030, or roughly 36,500 each year to keep up with predicted population growth. However, if the pace of construction over the last 20 years continues, at roughly 28,000 new housing units per year, the region would only add about ¾ that much. Artemel, Agnes and Sturtevan, Lisa. *Washington's Economic Future Depends on More Housing*. October 17, 2012. Greater Greater Washington. Found at: http://greatergreaterwashington.org/post/16470/washingtons-economic-future-depends-on-more-housing/.

Sustainability Research Center at UC Berkley has found that **each shared car takes between 9 and 13 other cars off the road** and that carsharing lowers all customers' vehicle miles traveled by about 25%.[5] A December 2013 study concluded that 53% of millennials say that high costs of gas, parking, and maintenance reduce their likelihood of car ownership and 39% of millennials choose alternative modes of transportation to protect the environment.[6]

For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or zone plan.

IV. COMMUNITY OUTREACH

Following the submission of the Initial Application, the Applicant has conducted extensive neighborhood outreach. On May 29, June 26, and August 27, 2014 the Applicant presented at the ANC 6E Zoning Committee meeting. On July 1 and September 2, the Applicant presented at the ANC 6E meeting. At their September 2 meeting, ANC 6E voted to recommend support for the Application by a vote of 5-2. The Applicant has obtained 20 letters in support of the Application including a letter from neighbors in a close proximity to the project. *See* Neighbor Letters of Support at Exhibit I. The Applicant also has strong support from the adjacent property owner at 435 Rhode Island Ave, NW, Troy Rogers.

V. WITNESSES

The following witnesses will appear on behalf of the Applicant:

1. Jimmy Edgerton, on behalf of the Applicant
2. David Bloom, Architect on behalf of David A. Bloom Architects

[5] U.C. Berkeley. Transportation Sustainability Research Center. *Shared-Use Mobility Summit White Paper.* October, 2013 (emphasis added)(Moreover, when people adopt car sharing, they also decrease their use of cars over time. "The studies by Shaheen and other researchers show that VMT among car sharing customers drops in subsequent years, often quite dramatically, as people figure out that it's not really so hard to get around by public transit, bike, or on foot."); See also Brasuell, James, *Study: Car Sharing Reduces VMT Over Time*, Planetizen, June 11, 2014.

[6] Zipcar's Fourth Annual Millennials Study, conducted by KRC Research, December 2013.

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 September 16, 2014.

Respectfully submitted

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

Meridith H. Moldenhauer
Eric M. Daniel
1912 Sunderland Place, N.W.
Washington, D.C. 20036
(202) 429-9000