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. DA~~NHL~~ (MD, DC)

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

July 21, 2014

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

Re: Application No. 18800 – 625 Park Road, NW (Square 3038, Lot 97) Supplemental Statement of the Applicant

Chairman Jordan and Honorable Members of the Board:

On behalf of Applicant 633 Park, Inc., enclosed please find a supplemental statement for the above-referenced application. The application is scheduled to be heard before the Board of Zoning Adjustment on July 22, 2014.

In response to the OP Report filed on Tuesday, July 15, and the HPRB Staff Report filed on Friday, July 18, the Applicant has revised the plans to reduce the number of units, reduce the lot occupancy, and increase the front yard setback from Park Road NW. While the degree of relief has been decreased, the areas of relief identified remain the same. Under 11 DCMR §3100.5, the Board "may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law." Accordingly, the Applicant is respectfully requesting the Board to waive their requirements under 11 DCMR §3113.8 and accept the attached Supplemental Statement based on lack of prejudice to the public. The Applicant is prepared to present the attached information at the hearing.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENAHUER & WIGGINS, LLP

By: Meridith H Moldenhauer

Enclosures:
Cc: Advisory Neighborhood Commission 1A
c/o Kent Boese, Chair (via email)
Bobby Holmes, SMD Representative ANC 1A09 (via email)
Brandice Elliot, Office of Planning (via email)
Joel Lawson, Office of Planning (via email)

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION OF	**625 PARK ROAD, NW**
633 PARK, INC.	**ANC 1A**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of 633 Park, Inc. (the "Applicant"), the owner of property located at 625 Park Road NW, Lot 97 in Square 3038 (the "Property") in support of its application for an area variance from the requirements regarding lot area (§401.3); courts (§406.1); rear yard (§404); and nonconforming structures (§2001.3) to allow the Applicant to convert a church to a multiunit dwelling and construct an addition in an R-4 District at the Property.

II. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A Revised Plans
Exhibit B HPRB Staff Report
Exhibit C Profit and Loss Analysis
Exhibit D MRIS Comparables
Exhibit E ANC Report
Exhibit F Resume of Real Estate Agent

III. REVISED PLANS

The Applicant has made revisions to the plans filed in the Initial Application in response to the OP Report filed on Tuesday, July 15, and HPRB Staff Report filed on Friday July 18. *See* Revised Plans at Exhibit A. OP has indicated a desire that the addition be reduced in size and density to a proposal more consistent with the intent of the R-4 District and the provision regarding conversion to apartment use. Specifically, OP has stated that "[a] more transitional setback, where the front of the addition lies between the row dwellings and church would be more appropriate in terms of urban design." The HPRB Staff Report shared a similar sentiment, indicating reservations that "the building's front wall is well forward of [the adjacent property], and large bays project yet further . . . and the lack of a front entrance would typically be problematic for compatibility with a rowhouse neighborhood." *See* HPRB Staff Report at Exhibit B.

In response, the Applicant has pulled back the bay windows an additional 6 feet from Park Road NW to align the proposed project with the neighboring property's porch to the west and pulled back the 3rd floor to align with the neighboring structure. While the properties along Park Road NW vary as to the setback from Park Road NW, including an apartment building just 7 lots to the east that abuts the street property line, the Applicant revised the plans to address concerns from OP and the HPRB staff. Furthermore, the Applicant has reduced the footprint of the new addition by 542 square feet, reduced the total lot occupancy to 64%, and reduced the total number of units to 38 units. *See* Exhibit A. Moreover, the Applicant has added separate front entryways and stairs and modified the appearance of the front façade. These revisions help ensure a pedestrian-friendly feel and enhance the aesthetic compatibility of the project with the character of a rowhouse neighborhood. With respect to the meaningful connection, the Applicant agrees with OP's analysis and has relocated the corridor to provide a communication between the two parts of the building. In connection with the above modifications, the Applicant had to reorient and reconfigure the units in the historic church building. The new layout in the church also stems from difficulty with floor heights and window preservation.

IV. EXCEPTIONAL SITUATION OR CONDITION

The Property is characterized by an exceptional situation and condition as a result of a confluence of the following factors: (1) the Property is currently occupied by a church that was designated as a historic landmark following the Applicant's acquisition; (2) the existing nonconformities of the existing church; and (3) the Property is exceptionally large. Each has been described in detail in the Initial Application and Prehearing Statement.

V. PRACTICAL DIFFICULTY

The Applicant seeks to expand on how the exceptional condition, including but not limited to the financial infeasibility, cause strict application of the zoning regulations to result in a practical difficulty to the Applicant. The Applicant previously did not provide such details because it respectfully submits that it had met the burden of proof. However, out of an abundance of caution following the Office of Planning Report and HPRB Staff Report, we submit supplemental information regarding the Applicant's economic practical difficulty.

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.[1]

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 unexpected designation of the Property as a historic landmark, a 38-unit structure is required for the project to be financially feasible. In this instance, the Applicant has demonstrated that without a variance the Property will not generate a fair and reasonable return on investment. It is not simply that compliance with the lot area requirement would produce less of a profit for the Applicant. Rather, *any* renovation of the existing structure that results in income from the alternative scenarios shown would result in an economically infeasible project. *See* Profit and Loss Analysis at Exhibit C. MRIS Comparables provide support for the sales prices used in the Profit and Loss Analysis. *See* Exhibit D.

Prior to the filing of the historic landmark application back in early 2014, the Applicant could have developed the project as originally anticipated, an 18-unit matter of right project. The 18-unit, matter of right scenario, prior to landmark status, would have resulted in a reasonable return in this instance of roughly 12%. The project, as previously designed, is no longer viable as a result of the designation of the Property as a historic landmark because the Applicant cannot build above or adjacent to the existing historic church. In recommending approval of concept plan for the proposed project, the HPRB Staff Report stipulated the importance of the setback of any addition from the historic church. *See* HPRB Staff Report at Exhibit B ("It is the retention of the church and its character that should be the aim, and that aim is sufficiently met here, *if its exterior remains little altered and seen in the round.*") [emphasis added].

The proposed 38-unit project for which relief is requested would result in a financially feasible scenario. The return on investment for the proposed project is 11.3%. Several other alternatives, shown

[1] *See* BZA Case No. 18688 (The proposed project, a 49 unit apartment building with corner retail, resulted in reasonable return in that instance of 11.34% while various alternatives shown resulted in financially infeasible projects); *see also, e.g.*, BZA Case No. 18562, BZA Case No. 18617, and BZA Case No. 18500.

in the Profit and Loss Analysis, result in financially infeasible projects while the proposed project results in a return that is comparable to, but less than, the anticipated return prior to designation of the Property as a historic landmark. In sum, the 38-unit project results in a reasonable, but modest, return to the Applicant while a project with fewer units results in an economically infeasible project. Therefore, a practical difficulty exists as a result of the unexpected designation as a historic landmark and the project becomes feasible only with income from 38 units. The number of units requested is directly related to the anticipated return provided by the matter of right project prior to the landmark status.

VI. NO DETRIMENT TO THE PUBLIC GOOD OR ZONE 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. The proposed project adaptively reuses and renovates an existing church for a residential use with appropriately-sized units in a residential neighborhood. Furthermore, the footprint, height, and exterior of the church will remain unchanged, with the addition allowing for additional complimentary residential units.

Moreover, there is no detriment to the public good or zone plan because, while some R-4 Districts consist of intact stretches of rowhouses, this Property is unique due to its location in an R-4 District on the edge of two higher density zones to both the west and south and the presence of several apartment buildings nearby. Thus, the Office of Planning's contention of a detriment to the public good because "[the proposed project] has not been designed in a way that respects the existing development pattern of the neighborhood" is inaccurate. There are several apartment buildings nearby including at 22 unit apartment at 601 Park Road, a 12 unit apartment at 608-610 Newton Place NW, a 23 unit apartment at 636 Newton Place NW, a 13 unit apartment at 646 Newton Place NW, and the Park Morton Apartments directly across Park Road NW, with 174 units on 149,383 square feet of property. The commercial corridor along Georgia Avenue directly west of the Property also has several PUDs and apartment complexes.

Furthermore, because an 18-unit apartment building could be constructed as a matter of right the question is the extent to which the additional units requested result in a substantial detriment to the public good. The unanimous recommendation of approval from the ANC specifically cited the "win-win scenario we set out to achieve. It protects and saves the historic church as well as adding needed housing/density to the area." *See* ANC Report at Exhibit E. In addition, the ANC supported the prior proposal, with 41-units, with no opposition. Nonetheless, the Applicant has reduced the number of units, pulled back the front façade, and enhanced the aesthetic compatibility with the character of a rowhouse neighborhood. This demonstrates that the neighboring community does not find the requested relief to be detrimental to their community.

For this reason, the reasons discussed in prior submissions, and as will be elaborated upon during the hearing, 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.

IV. COMMUNITY OUTREACH

The Applicant has conducted an extensive amount of neighborhood outreach. The Applicant has met with ANC1A Chairperson Kent Boese and SMD 1A09 Representative Bobby Holmes on multiple occasions and received support. On July 17, 2014, ANC 1A voted unanimously, 7-0-0, to recommend approval of the proposed project. Furthermore, the Applicant has obtained 27 letters in support of the Application. *See* Neighbor Letters of Support at Prehearing Statement, Exhibit B.

Respectfully submitted

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

By: ______________________

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