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D.C. OFFICE OF ZONING

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The Office of Planning
1100 4th Street, SW,
Suite 650 East,
Washington, DC 20024

June 20th, 2015

Re: 1546 New Jersey Ave NW, Washington DC; BZA application 18984

Dear Mr. Eric D. Shaw;

My name is Babak Zahraie, the owner of 1546 New Jersey Ave, NW property. Upon return from a recent trip, and reviewing the online tape of the BZA meeting for the application number 18984 dated April 28, 2015, for the consideration of our application for the renovation of the said property, and review of OP's report written by Mr. Jesick, I could not help but be amazed and flabbergasted by the accusations against our application.

The reason that I am writing this letter is the charge introduced by the Office of Planning against our application on "self-imposed difficulty" basis. The Office of Planning representative maintains that we have bought this property at a "high price"! The grounds for this is a concoction.

This property has been bought through established norms of sales and purchase via a known, legal, and registered real estate agency in the District of Columbia. A neighbor, seemingly in cahoots with your office, who was present in the meeting advances the same invalid charge. Based on his own saying, this gentleman neighbor, has in the past, tried to purchase this property (prior to our purchase) and was not able to purchase it because he had offered a lower price. He is welcome to his opinion; it cannot be the basis of the charge of rejecting our application by your office based on "self-imposed hardship".

The established norm to purchase a property is for the seller to review all offers placed on a property on a set date, and to accept the one closest to the asking price with the best conditions. An offer like ours is not necessarily the highest offer.

On what basis does your office question the process and result; in the case of sales and purchase of New Jersey St property is anybody's guess! What is important is it is unfounded and without any real basis. Its aim is to strip a family (we are a family of four and all residents of The District of Columbia), from fair play. The intent and purpose of our purchase and mode of purchase is in plain view. There is not a comp or data that refutes our purchase. DC real estate market is stable; there is no reports in papers that properties are being bought at higher than market prices.

This fact is corroborated by the applicability of the regulation. Please see below Addendum that shows at least in 5 cases where it has been clearly noted by the Court of Appeals as well as the BZA that the "self-imposed" practical difficulty is not applicable in area variance cases such as ours

Based on the structural architect's report our property needs a super gut job, and our plan to build 3 units in this property is within guidelines of the city as well as any rudimentary profit and loss calculation.

I thereby request the Review Board of BZA to review the unfounded charge advanced/leveled by your office, kindly declare it to be invalid. The claim of purchase at a "high price" against us is without basis. Its removal helps this application to be reviewed without bias to get the attention it deserves for approval

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Babak Zahraie', with a stylized flourish at the end.

Babak Zahraie

Cc: The Board of Zoning Adjustment members are as follows

Lloyd Jordan, Chairperson

Marnique Heath, Vice Chairperson

Jeff Hinkle, National Capital Planning Commission Designee

Peter May, Zoning Commission member in rotation

ADDENDUM

BZA PRECEDENT CASES :

1. BZA APPLICATION NO. 17540 & 17541

self-imposed practical difficulty, 320 A.2d at 294.

The District of Columbia Court of Appeals has directly stated that knowledge of limitations of a property prior to its purchase is not a factor to be considered in an area variance analysis. See, *Association for Preservation of 1700 Block of N Street, N.W. and Vicinity v. D.C. Board of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978). ("The YMCA's self-created hardship [i.e., 'full knowledge' of problems with land 'prior' to purchase] is not a factor to be considered in an application for an area variance, however, as that factor applies only to a use variance.") Therefore, the fact that the School purchased the Dent Building in 1998, knowing its limitations and exceptional characteristics, does not prevent the Board from granting the requested variance relief.

2. BZA APPLICATION NO. 15461

In regard to the issue raised by counsel for the opposition that the "self-imposed hardship" standard applies to area variance cases, the Board notes that the D.C. Court of Appeals again in *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1169, specifically stated that ". . . prior knowledge or constructive knowledge that the difficulty or hardship is self-imposed is not a bar to an area variance " Further, the Court stated that the exceptional situation or condition 'l. need not have preceded the promulgation of the zoning regulation."

3. BZA APPLICATION NO. 13918

As to the self-imposed difficulties, the variance requested are area variances. The Courts have applied the self-imposed hardship doctrine to use variances only. Area variances must be founded on a practical difficulty inherent in the property itself

4. BZA APPLICATION NO. 15701

With respect to the opposition's assertion that the self created hardship rules operates to prevent the granting of the requested variance, the Board finds that the D.C. Court of Appeals has held that self-imposed hardship or even prior knowledge or constructive knowledge of the difficulty, is not a bar to an area variance, the type of variance with which is sought in the instant case. *Gilmartin v. BZA*, 579 A.2d 1164 citing - *ALW v. D.C. BZA*, 338 A.2d 428. See also, *Association for Preservation of N Street v. -f BZA* 384 A.2d 674. The rule is only applicable to use variance cases.