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August 31, 2001

Sheila Cross Reid, Chair
Board of Zoning Adjustment
Room 210
441 4th Street, N.W.
Washington, DC 20001

Re: 5516-26 Hunt Place, N.E. BZA Case No. 16682

**Motion for Reconsideration and Rehearing**

Dear Ms. Reid:

An order was filed on August 22, 2001, denying an application for variances and a special exception to permit 6 town homes at 5516-26 Hunt Place, N.E. (Square 5204, Lots 31-36). This is a Motion for Reconsideration and Rehearing on the case because of new information which was not presented to the Board at the hearing and which could not reasonably have been presented prior to the decision in the case.

**Affordable housing**

It was noted in the Decision and Order that this application had the support of Advisory Neighborhood Commission 7C, the Councilmember for Ward 7, the Office of Planning, the Department of Housing and Community Development, and the neighborhood. There was no opposition to the application. The reason for the wholehearted and active support is the urgent need for affordable housing in this neighborhood of the kind presented by this application, and the frustrations encountered by those seeking to encourage it. It recognizes the difficulty of providing sufficient space to families at a price they can afford. If there were an economic way to bring housing to this site, it would have been done long ago. Mr. Milton Bailey, Director of DHCD put it succinctly:

BZA
Case No. 16682
Exhibit No. 44

Board of Zoning Adjustment
District of Columbia
CASE NO.16682
EXHIBIT NO.44

The 6 new townhouses will provide badly needed affordable housing units for purchase in this portion of the District and will further help stabilize this neighborhood by increasing the number of homeowners.

Through the introduction of new construction techniques, it will be possible to provide affordable housing on the site. Moreover, in a rehearing, we can provide the Board with additional information on the need and difficulty of providing affordable housing in this neighborhood sufficient to justify, along with other evidence, the granting of variances and special exceptions.

Finally, for the houses to remain affordable, development costs must be kept low. If the Applicant is forced to wait a long time before refiling the case, the added costs would be prohibitive. The legal fees associated with preparing a new case, filing fees, additional taxes, increases in the cost of construction, and other factors will make it far less likely that any development will occur on the site.

**Modular housing**

At the June 5 BZA decision meeting, considerable attention was paid to the construction techniques contemplated for these houses. Board members referred to them as "pre-fab houses" and "substandard construction". Unfortunately, the image of factory built houses suffered from early efforts of the industry.

The picture is far different now. The units proposed for this site are modular houses, built in sections in a factory and shipped to the site for erection on a block foundation. The advantage of building these houses in a factory and erecting them on site in a day is that they can be secured much more quickly. Houses can be locked up on delivery, which prevents theft of materials, diminishes the opportunity for vandalism, and saves additional cost.

However, sturdiness and quality are not sacrificed in the process. These houses are as well constructed as standard on-site construction since they are built to the BOCA code. Modular housing should not be confused with "manufactured housing", such as double-wide mobile homes, which are built to totally different codes. Moreover, the manufacturing process is monitored by a third party inspection service which assures the buyer that houses conform to the building codes in their jurisdiction. This service is independent of the factory and is answerable to the governmental jurisdictions. Once the third party inspector's seal is on the unit, the local inspectors are relieved of the responsibility, for example, of tearing out walls to check plumbing, electrical wiring, etc.

Since part of the Board's concern about this development stemmed from negative perceptions of the quality of the housing, we need to provide testimony and exhibits concerning modular housing.

**Site Issues**

The Applicant was unaware of the need to address several site issues and was unprepared for the level of detail requested by the Board. Until the Applicant read the transcripts of the hearing on May 8, 2001 and Board's meeting of June 5, 2001, it misperceived what the Board required as to drainage plans and did not understand the Board's objections to the drainage plan for the fronts of the houses. Unfortunately, the Applicant assumed that drainage and the affect of the grading plan on neighboring properties was a permit issue, rather than a zoning issue. It was willing to meet any requirements placed on it by the District's civil engineers in the permit review process. Now that the Applicant properly understands the Board's concern for this element of the plans, it is prepared to present to the Board a new plan of grading, prepared by its new architect, Angel Clarens, which will have the required level of detail, and is modified to meet the concerns expressed by the Board.

Similarly, issues of grading of the rear of the site were not issues on which the Applicant was prepared to provide extensive information at the time of the first hearing. Perhaps the applicant could have satisfied these needs if the Board had seen fit to continue the hearing. Now, plans have been revised to address the issues raised by the Board, a process that has resulted in a far better project than originally presented. The Applicant wishes to present these revisions to the Board in a new hearing.

**Marketability**

In the Board meeting and in the written Decision, the Board members expressed the desire that the houses be reduced in size so that variances would not be needed. While a smaller house could be built on the site, it would provide far less living space for a family of four than is currently found in the neighborhood as a whole. Without variances, the houses would be reduced to 1,632 square feet of living space, rather than 1,890 square feet, including the garage. We would like to introduce new evidence to show that most of the town homes in the immediate vicinity exceed 1,800 square feet and many are over 2,000 square feet. Moreover, significantly smaller houses containing only 2 bedrooms and no basements would not likely be marketable at a price that will justify development risk and financing. The cost of building a smaller house on this site is not very different from a larger one since many of the costs are identical: land, site preparation, appliances, fixtures, transportation, security, supervision, etc. Accordingly, a selling price that reflected these costs would be out of the range of many families and may not be financeable.

The written Decision of the Board argues that the Applicant could eliminate the garages in order to have more living space. We would like to show that there is a practical difficulty in marketing the houses absent garages, since cars left on the street are subject to vandalism and theft.

**A variance is justified**

Revised site plans and topographical maps show that there is an extraordinary topographical condition which creates exceptional practical difficulties. While it is true that lots 31-35 are identical in size, it is not true that they each suffer from the same disability. They are not on level ground. Therefore, the slope of the ground is different in each case. Each pair of houses is planned to step down some four feet. Each house has a different slope to the rear yard. Each has a different problem with siting. Each has a different problem handling water and drainage on the Hunt Place side.

In addition, even if the lots are regarded as not unique compared to each other, the Zoning Regulations treat these houses as a group for purposes of R-5-A special exception whether they are on one lot or 6. Had we proposed a multiunit building on the combined 6 lots, uniqueness would not have been challenged, since the topography of this site is clearly different from that of the neighbors.

We would propose additional arguments for uniqueness and exceptional practical difficulty if given the opportunity. As the Board's Decision points out, economic justification can sometimes be used to support practical difficulty where the exceptional and extraordinary condition arises out of the land itself and there is a showing that the owner is deprived of reasonable use of his property by the strict application of the Zoning Regulations. *Tyler v. DC BZA*, 606 A2d 1362 1992).

In a neighborhood where most houses are larger than 1,632 square feet, the size permitted on our sites as of right, it is questionable whether they would be marketable at a price which would cover the development costs and would be financeable. See *Wolf v. DCBZA*, 397 A2d 936 where the court held that the Applicant was entitled to a variance where its denial would put marketability in doubt. See also *Monaco v. DC BZA*, 407 A2d 1091, where an Applicant's inability to realize a reasonable return on investment was judged to be a justification for finding uniqueness and hardship. In a later case involving the same complainant, the Court held that variances should be granted where strict application of the regulations would be "unnecessarily burdensome" *Monaco v. DC BZA*, 409 A2d 1067, 1072.

The Decision cites cases to the effect that neither extra profit nor convenience will justify the grant of a variance. By contrast, the issue here is not extra profit or convenience but whether the houses can reasonably be developed without the variances. We maintain that they cannot and request the opportunity to make such a showing.

Under R-4, normally considered a lower density designation, an FAR of 1.8 is permitted. The way the Zoning Regulations are structured, usually density increases in

the higher number zones. Here the neighborhood was zoned R-5-A in anticipation of garden apartments and a .9 FAR seemed reasonable. But the neighborhood did not develop that way. The trend was to build single family townhouses which has changed expectations and marketability. The BZA is empowered to make adjustments in individual cases where the general designations of the Zoning Regulations create unanticipated and unfortunate hardships and "practical difficulties". The ability of the Board, in the R-5-A Zone District, to adjust lot sizes and widths as well as its special exception authority, anticipates the need to make necessary adjustments where there are demographic and physical changes which could not have been foreseen by the Zoning Commission.

For all these reasons, we move for reconsideration and a rehearing on the subject case.

Yours very truly,

*Stephen N. Gell*

Stephen N. Gell

cc: Ann McGee
ANC 7B