Donna Murphy & Keenan Keller
1850 Monroe Street, NW
Washington, DC 20010

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VIA U.S. MAIL
Board of Zoning Adjustment
Office of Zoning
441 4th Street, NW, Suite 210-S
Washington, DC 20001

Re: Application # 16732 (1841 Park Road, NW - Sq. 2614, Lots 41 & 41)

To Whom it May Concern:

We oppose the referenced application for a zoning variance and request party status in this case. As required by Title 11 DCMR Zoning Regulations, Section 3106.2, we provide the following information:

A) Donna Murphy and Keenan Keller, 1850 Monroe Street, NW, Washington, DC 20010;

B) We request to appear and participate as a party;

C) We will appear as opponents of the application;

D) We will appear pro se;

E) The following information supports our request for party status:

1) 1850 Monroe Street, NW, Washington, DC 20010;

2) We have owned and occupied the property since 1995;

3) Our property is immediately adjacent, across the alley, of the carriage house of the applicant's property;

4) Approval of the of the applicant's request would have a substantial negative impact on the quiet enjoyment of our property by creating environmental, economic and social conditions that were precluded by existing zoning regulations. Our objections to the application are detailed in the following memorandum.

Very truly yours,

Donna M. Murphy

Keenan R. Keller

BZA
Case No. 16732
Exhibit No. 38

Board of Zoning Adjustment
District of Columbia
CASE NO.16732
EXHIBIT NO.38

Memorandum of Donna Murphy and Keenan Keller
in Opposition to BZA Application # 16732

Introduction

Donna Murphy and Keenan Keller submit this memorandum in support of their petition for intervenor party status in the proceeding for BZA Application # 16732. Intervenors Murphy and Keller oppose said application for a hybrid area-use variance of the neighboring carriage house because a waiver of zoning requirement for that property would result in a substantial negative impact on the quiet enjoyment of their property by the creation environmental, economic and social conditions that were precluded by existing zoning regulations.

I. Factual Background

The property and improvements that are the subject of variance Application # 16732 are located in the R-4 Mount pleasant historic district on the north side of Park Road, NW, (Square 2614, Lot 42). The property is improved by a three-story single-family dwelling and a two-story accessory carriage house that has been used for parking and storage. The carriage house abuts a 14' alley and is built out to the alley line. The carriage house is approximately one foot from the neighboring carriage house on Lot 43 to the west and 14' (across the alley) from the neighboring carriage house garage on 1850 Monroe Street, NW (Lot 68) of intervenors Murphy and Keller (hereinafter "Intervenors").

The improvements on the property have been classified as contributing to the historical character of the Mount Pleasant community and are part of a series of neighboring, large single-family homes built on the north side of Park Road. All six the homes on this block of Park Road are similar in square footage, lot size, and elevation. In addition, all six homes possess accessory carriage houses substantially similar to the carriage house that is the subject of the applicants' variance. Intervenors' single-home has also been also been classified as contributing to the historical character of the community and posses an accessory carriage house. In total, 10 properties abutting the alley between the 1800 block of Monroe Street, NW, and Park Roads, NW, have freestanding accessory carriage houses. None of these structures have been legally converted for occupancy or commercial use and are used for storage or garage purposes.

II. The Interests of Murphy & Keller Support Grant of Party Status In BZA Proceedings

Pursuant to statute, the Board of Zoning Adjustment ("BZA") "shall grant party status ... if the person has clearly demonstrated that his or her interests will be more significantly, distinctly or uniquely affected in character or kind by the proposed zoning action than those other persons in the general public." D.C. Code Ann. 5-424(g)(3) (1981).

As immediate neighbors of the property that is the subject of the variance application, Murphy & Keller are more that able to demonstrate significant, unique or distinct affect on the

enjoyment of their property from the proposed zoning action. As noted above, Intervenors own property that is directly across the alley from Applicants' property and is on 14' feet away from the carriage house that is the subject of the variance. Any variance from side and rear yard requirements for the carriage house would result in a change in the use of that structure from garage and storage to occupancy. That occupancy would produce noise, increased alley traffic/ congestion and increased trash that, without the mitigation of a side or rear yard, would spill directly over to the Intervenors' adjacent property, significantly affecting their quiet enjoyment.

The negative spillover effect from a waiver of the area requirement that would result from the proposed change is not speculative. Since Applicants' purchase of the property, Intervenors have already experienced an increase in alley congestion and noise that have resulted in limited access to their garage and enjoyment of their property. Specifically, contractors have repeatedly blocked access to the alley and commenced construction before the permitted time, waking their children. In the absence of parking and an adequate separation between the properties created by a side and rear yard, this disruption may continue and become chronic if the carriage is used for occupancy.

In addition, Intervenors are adversely affected by any precedent established by granting a variance that would open the carriage house structures on the alley for occupancy. The garage ally is used as the main access point for Intervenors' property. Consequently, they are sensitive to traffic and access issues. Intervenors will be uniquely affected by any precedent that opens the nine other carriage house for use as apartments because increased density will exacerbate noise, trash and access. Further, increased ally traffic creates a public safety issue. While the alley is a public thoroughfare, it is largely used by the adjacent single-family, long term property owners. Familiarity between neighbors has allowed them to easily monitor strangers and discourage crime. With an increase in density created by carriage house occupancy, neighborhood familiarity would be progressively lost as more carriage house are turned to rental units and occupancy turnover increases.

II. Legal Standard for Granting Variance for Non Conforming Structure

As a general matter, the purpose of a variance provision is to prevent a zoning statute from operating to deprive a property owner of all beneficial use of his property. Clerics of Saint Viator v. Board of Zoning Adjustment, 320 A.2d 291, 294 (1974). Pursuant to statute the Board of Zoning Adjustment ("BZA") may grant a variance:

> Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property ... or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation ... would result in peculiar and exceptional practical difficulties to or exceptioonal and undue hardship upon the owner of property.... Provided that such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

D.C. Code Ann. 5-424(g)(3) (1981). Courts have interpreted this statute as placing the burden on the applicant to establish: 1) that the property is unique because of some physical aspect or "other extraordinary or exceptional situation or condition" inherent in the property; 2) that strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant and 3) that granting the variance will do no harm to the public good or zone plan. Myrick v. Board of Zoning Adjustment, 577 A.2d 757, 760 (1990).

Courts have interpreted the statute disjunctively, creating differing burdens for "use" versus "area" variance. Area variances, relating to a side yard, a rear yard or a frontage requirement, were characterized as "less sweeping" and made subject to the practical difficulties test. Conversely, use variances were characterized as more invasive and made subject to the more strict undue hardship test. Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 540 (1972). However, courts have not held to the strict use-area dichotomy and have held that certain variances are hybrid in character and, therefore, should be held to the higher "undue hardship" standard. Taylor v. Board of Zoning Adjustment, 308 A.2d 230, 233-34. (1973).

III. Applicants Cannot Meet The Burden for Granting a Variance

The facts presented by this application are not novel and set a precedent that should guide the BZA's determination. In Capitol Hill Restoration Society, Inc, v. Board of Zoning Adjustment, 534 A.2d 939 (1987), the Board faced the similar issue of granting an area-use variance for a carriage house in a historic district that would have resulted in its conversion to occupancy from prior garage and use. In that case, the BZA rejected the application because the features presented by the carriage house were present in structures across the community and, consequently, no exception circumstance were presented by the property. *Id.* at 92-43. Notably, the court held that "Granting a variance where a particular hardship is common to an entire neighborhood would amount to an amendment of the zoning regulations, an action that only the Zoning Commission is empowered to take. *Id.* at 942.

A. **The carriage house that is the subject of the variance application here fails to present unique or extraordinary features that could merit a variance.** As noted above, the carriage house is one of ten freestanding carriage house properties on this alley alone and one of seven two-story carriage houses. Each of the ten accessory buildings is on the property of historical homes similar in size or historical merit located on the alley and all are nonconforming, built before 1958. None have been converted for legal occupancy use and retain their original uses as garage or storage areas. All present rear and side yard limitations that would require variances if their owners sought to convert their use to occupancy. Consequently, Applicant's cannot meet the first prong of their burden of proof.

B. Even assuming that there is some unique characteristic of the Applicants' carriage house, the strict application of zoning regulations does not result in undue hardship. As a threshold matter for determining the nature of this burden of proof, the BZA must determine

whether Applicants seek an area variance, a use variance or some hybrid of the two types. Based upon their own filing, it is clear that Applicants seek a hybrid area-use variance. In their application for zoning relief, filed on March 22, 2001, applicants requested relief from side and rear yard zoning requirements, D.C. Code Ann. 5-404.1 & 405.9, which have been classified as area variances, and D.C. Code Ann. 5-2001.3, which applies to a nonconforming structure devoted to a nonconforming ***use***. As a consequence of their application, Applicants are subject to the more strict "undue hardship" standard. Taylor v. Board of Zoning Adjustment, 308 A.2d 230, 233-34. (1973). Courts have held that a use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with zoning regulations. An inability to put a property to a more profitable use or loss of economic advantage is not sufficient to constitute hardship. Dwyer v. Board of Zoning Adjustment, 320 A.2d 306, 307 (1974).

Applicants' inability to locate apartments in the carriage house will not eliminate their ability to subsidize restoration costs. The original variance application, filed March 22, 2001, stated that the proposed use of the property was an apartment house, with five units. The space was to be subdivided, with the basement of the main structure split between two units and the carriage house have one unit on each floor. As of June 29, 2001, the plans have been amended down to three apartments, one in the basement and two in the carriage house.[1] Rejection of the zoning application will result in the net loss of rents from only one apartment, assuming that Applicants will choose to place two apartments is the basement of the main house, as originally planned. The BZA in under no obligation to allow applicants to maximize the income from their property as a condition for granting a variance.

C. Granting Applicants' Variance Harms the Public Good and Zoning Plan

The R-4 district was designed to include areas that were primarily developed with row dwellings, but within which there were a substantial number of conversions of those dwellings to multi-family units. The primary purpose of the R-4 district was "the stabilization of the remaining one-family dwellings." D.C. Code Ann. 5-330.2 (1981). Over the past decade, zoning regulations have helped turn the tide massive conversions of the large row houses in the Mount Pleasant community. Similarly, strict application of the regulations has help in the return of many historical properties to their original use as single-family dwellings.

1. Granting the variance in the case would represent a step backward in the plan to stabilize single-family dwellings in the community. The property at 1841 Park Road has always been used as a single-family dwelling. The property is one in a series of historical homes

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[1] At the July 2, 2001, meeting of ANC 1E Applicant Barnett stated that he had not determined the rental rates or features of the apartments to be located on the property. Further, there is no information in the record regarding a projected rate of return from rentals or the necessity of rental subsidies for restoration of the property.

on that block and the adjoining alley, all of which –save one significant exception[2]– are devoted to single family use. Turning that historical property into a multi-unit apartment is inconsistent with the current use of that property and all similar neighboring properties. Moreover, turning the house into an apartment represents a serious setback for single-family use on that block. Prior to the 1980's several of the neighboring large properties on Park Road were subdivided as apartments or used as rooming houses. Today, all these homes have been restored by their owners and returned to single-family use.

2. Granting the variance would undermine the intent of zoning legislation to strictly regulation nonconforming property and multi-unit alley . With regard to nonconforming structures, "it is the intent of [zoning regulations] that nonconformities shall not be enlarged upon, expanded or extended, nor shall they be used as the basis for adding other structures or uses prohibited elsewhere in the same district. D.C. Code Ann. 5-2000.2 (1981). This variance would set a precedent that would allow nonconforming structures to be escape strict regulation by architectural sleight of hand. Part of the variance predicated on the connection between the carriage and the main structure by an open breezeway. Such a structure is merely ornamental in nature and does not represent a true connection.

More important, this application represents a problematic precedent that could open the floodgates of alley occupancy. As a general matter there is a prohibition on building multi-unit structures for human habitation on alley lots. D.C. Code Ann. 5-207.1.2 (1981). Granting the variance sets a precedent that could result in wave carriage house conversions that would populate alleys across Mount Pleasant and the city. This would raise a host zoning, health and safety issues that zoning regulation intended to preclude.

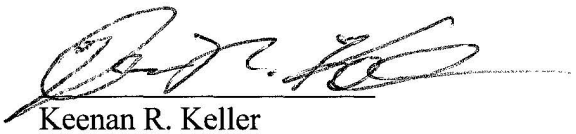
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[2] Th property located at 1801 Park Road, NW, is the notable exception to single-family use on the block. That property, similar in lot size and original square footage to 1841 Park Road, was converted into a multiple-unit apartment before Mount Pleasant received its historical designation and was partially the impetus for the project. Because of similarities between the properties, the immediate neighbors of 1841 Park are concerned about the unification of Lot 41 and 42 and any conversion of the home into apartments.

For the foregoing reasons, Donna Murphy and Keenan Keller should be granted party status in the proceeding for BZA Application # 16732 and said application for a hybrid area-use variance should be denied.

Dated: July 10, 2001

Respectfully submitted,



Keenan R. Keller
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