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October 12, 2005

VIA HAND DELIVERY

D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: Board of Zoning Adjustment Application No. 17367
Applicant's Response to Office of Planning's Supplemental Report

Honorable Members of the Board:

At the Public Hearing on this application on Tuesday, September 27, 2005, the Board left the record open until October 5, 2005 for the Office of Planning ("OP") to file a supplemental report, and until October 12, 2005 for the Applicant to file a response. This letter responds to OP's Supplemental Report, dated September 30, 2005 (the "Supplemental Report"), filed October 4, 2005, and follows the format of the Supplemental Report.

Please note that the Exhibits A through F, prepared by the Applicant and submitted at the public hearing, were not intended to present the entire justification for the requested use variance relief. Rather, they were intended to supplement the arguments in support of the variance request, and to illustrate certain points made during the Applicant's presentation.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17367
EXHIBIT NO. 27

Board of Zoning Adjustment
District of Columbia
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I. Exhibit A

The purpose of Exhibit A was to supplement the Applicant's testimony that large condominium units without parking are much less desirable than large units with parking, and therefore sell for a lower price per square foot. The Applicant did not argue that he would suffer an undue hardship because he would make less money from the sale of a large unit without parking.

The Applicant testified and presented evidence that the subject property cannot reasonably be used for any of the uses permitted as a matter-of-right or by special exception in the R-3 zone, as evidenced by the fact that the subject property was on the market for over 3-1/2 months during a hot real estate market, and during that time no individual or organization sought to purchase the property for any permitted matter-of-right or special exception use.

The Applicant also testified and presented evidence that it is financially infeasible to create 2 or 3 units in the building because of the building size and layout, the renovation costs, and the real estate market. In Palmer v. D.C. Board of Zoning Adjustment, the Court stated that in a use variance case, "it must be shown that the regulations 'preclude the use of the property in question for any purpose for which it is reasonably adapted, i.e., can the premises be put to any conforming use with a fair and reasonable return arising out of the ownership thereof." 287 A.2d 535 at 542 (D.C. 1972) (emphasis in original). The Court in Palmer also stated that one of the purposes of granting variances is to prevent useable land from remaining idle. Id.

The Applicant testified and presented evidence that it is not reasonable to adapt the subject building to any conforming use with a "fair and reasonable return" to the owner. Indeed, the Applicant testified that he purchased the subject property for $2,500,000 and that it will cost him $1,544,074 in construction costs to convert the building into four units, which amounts to a

total financial output by the Applicant of $4,044,074. The Applicant intends to keep one unit, valued at approximately $2,300,000, for himself and to sell three units at a total price of approximately $1,700,000. Thus, the Applicant's proposed plan actually results in a loss of at least $44,074, plus architect, engineer, zoning and condominium attorney fees and any additional construction-related costs that may and are likely to occur. However, as the Applicant testified at the hearing, he is willing to incur this loss because of his desire to live in the building.

The Applicant also testified that a developer would need to develop and sell a minimum of six units in the building in order to make a modest profit (i.e. a "fair and reasonable return") on the subject property. The Applicant's idea of creating the condominiums is to offset the high construction costs and convert the building into a beautiful four-unit residence that will blend into the fabric of the neighborhood, and will have less of an impact on the neighborhood than a six-unit building.

OP objects to the grant of a use variance for the subject property. However, OP supports converting the subject property into a flat. A flat is an R-4 use and would also require a use variance. Thus, OP implicitly agrees that the property is affected by an exceptional situation or condition, that the strict application of the use regulations would impose an undue hardship, and that a use variance can be granted without substantial detriment to the public good.

OP also objects to the proposed four-unit building as being inconsistent with Comprehensive Plan. The Generalized Land Use Map of the Comprehensive Plan designates the subject property in the moderate density residential land use category. As shown on the Zoning Consistency Chart attached to OP's Report to the Zoning Commission Regarding the Comprehensive Plan Implementation, dated May 23, 1991, attached hereto as Exhibit A, the moderate density residential land use category includes the R-3, R-4, R-5-A and R-5-B zone

districts. This zoning consistency chart is widely used to interpret the Comprehensive Plan's Generalized Land Use Map. Thus, it is clear that a multiple dwelling is not inconsistent with OP's own interpretation of the Comprehensive Plan's designation of the subject property in the moderate density residential land use category, and that the proposed four-unit building will not substantially impair the intent, purpose and integrity of the zone plan.

II. Exhibit B

The purpose of Exhibit B is to demonstrate that the subject property was much less desirable as a residential property when it was on the market than other residential buildings that were on the market at the same time.

The Applicant testified that the building has a unique interior layout, specifically designed for institutional private school use, and even if reconfigured, is too large for a modern single-family dwelling use in this immediate location. Indeed, OP "agrees that this is an unusual number of floors for a one-family residence."

OP refers to the properties cited in Exhibit B (2336 Massachusetts Avenue and 2344 California Avenue), 2111 S Street, and a school in the 2100 block of Bancroft Place as evidence that conversions to single family dwelling use are feasible. However, none of these properties are impacted by the exceptional situations and conditions that impact the subject property.

2336 Massachusetts Avenue is approximately 4,170 square feet in size, has a lot area of approximately 1,725 square feet, and has 3 stories. 2344 California Street, which is zoned R-1-B, is approximately 6,591 square feet in size, has a lot area of 9,750 square feet, and has 3 stories. 2111 S Street is approximately 6,650 square feet in size, has a lot area of 1,700 square feet, and has 5 levels. Finally, 2138 Bancroft Place, which was previously used as a school, has a lot area of 4,271 square feet and 3 stories. The school was converted back to its original

configuration of two adjacent row dwellings, one with a gross floor area of 3,470 square feet and the other having a gross floor area of 4,166 square feet, simply by reestablishing a party wall.

In contrast to the properties identified by OP, the subject property is significantly larger than each of these properties, measuring approximately 9,024 square feet in size and having six levels, which is unusual for a single family residence.

III. Exhibit C

In its report dated September 12, 2005, OP compared the size of the Applicant's structure to the size of other structures on Bancroft Place, and concluded therefrom that the size of the subject building is not exceptional or extraordinary. The Applicant submitted Exhibit C to demonstrate that the 2100 block of Bancroft Place is very different from the north side of the 2100 block of S Street, and thus is not a valid comparison. The Applicant testified that the blocks are not the same, and that a part of the subject property's uniqueness is the property's zoning history. The Applicant further testified that the subject property does not fit the typical class of R-3 properties based upon the property's actual use and the fabric of the neighborhood. Moreover, the Applicant testified that the character of the north side of S Street, between Connecticut Avenue and Phelps Place, is completely different than that of Bancroft Place. Contrary to OP's assertion, the Applicant never argued that the presence of non-single family residences within a block of the subject property supports the requested use variance.

IV. Exhibit D

The purpose of Exhibit D is to demonstrate that multiple dwelling use is the predominant use, in terms of numbers of the different uses, on the 2100 block of S Street. Exhibit D demonstrates that the 2100 block of S Street is comprised of 32 condominium units, plus 8 single-family homes, 1 single family home with a dentist's office, and 3 embassies. There is

nothing deceiving about this data. Moreover, as shown on the plat attached hereto as Exhibit B, the north side of S Street, between Connecticut Avenue and Phelps Place, is comprised of 115 linear feet of single-family residential uses and 160 linear feet of condominium buildings, not including the subject property. This data clearly demonstrates that the immediate neighborhood is unique in that includes a significant amount of property, both in terms of number of units and linear footage, that does not fit the typical class of R-3 properties and is devoted to multiple dwelling units.

OP states that "a more accurate measure would be to compare the number of lots used in conformance with the R-3 zone District with those not." However, this is not a factor in the use variance test. The Applicant submitted this information to demonstrate that the 2100 block of S Street consists of a number of uses, but the primary use is multiple dwellings.

The proposed 4-unit condominium apartment use is a residential use in a residential zone in a residential neighborhood. The proposed use will be much less dense than the most recent permitted use of the property as a school for up to 200 students, as well as many of the other uses that are permitted as a matter-of-right or by special exception. Moreover, the proposed use will be consistent with prior Board approvals in the immediate area since many of the properties in the R-3 zone along the north side of S Street, between Florida and Phelps have been approved by the Board for multi-family dwelling uses. Finally, the proposal will provide a stabilizing effect on the neighborhood, will be consistent with the mix of uses in the area, and will significantly decrease the density of use of the building.

V. Exhibit E

The Applicant is not required to provide any off-street parking spaces and OP agrees that the Applicant is not required to seek any relief from the parking requirements of the Zoning

Regulations. However, contrary to OP's statement in its Supplemental Report, the Applicant never testified or otherwise stated that its decision to provide one parking space is a unique situation that results in an exceptional and undue hardship that can be rectified through the provision of more units.

In OP's September 13, 2005 report, OP stated that the application provides for less parking than other conversions that were permitted by the Board, and that the lack of sufficient parking would be a detriment to the neighborhood and not in conformance with the Land Use Map. OP indicated in its September 13th report that the owners of 2125 S Street and 2115 S Street were able to secure off-street parking spaces for a number of their units.

The Applicant submitted Exhibit E to demonstrate that the property listing for 2115 S Street indicates that the property does not have off-street parking. The Applicant was not able to locate any records of any condominium unit in 2115 S Street being able to rent parking one year after the condominium conversion of the building.

Nothing in the record supports OP's conclusion that as the number of units increases, so does the *demand* for parking. In any event, this application should not be judged against a theoretical plan and speculative parking demand figures, as the Applicant is not seeking any parking relief. But it is important to note that the neighboring project at 2125 S Street was approved for 8 condo units with 5 parking spaces (and three units without parking spaces) with the support of OP in Case No. 16497. It is also important to note that the proposed four-unit building will have far less density, in terms of use, and far less of an impact on parking demand in the neighborhood, than the former school for 200 students, plus faculty. This demonstrates that there will be no substantial detriment to the public good.

VI. Exhibit F

The Applicant submitted Exhibit F to reiterate the uniqueness of the subject property. As the exhibit indicates, and as the Applicant testified, the Applicant has never seen a six level single family home in his twenty years of experience as a professional and an expert in the real estate industry. Indeed, in its Supplemental Report, OP agrees that six levels is an unusual number of floors for a single-family residence. OP states that "whether a proposed use will permit more or less traffic other than a specified exception use is not relevant to the application" as misleading. OP ignores the adverse traffic and parking impact on the community from the former school use of the site, which could be reestablished today as a matter of right, while focusing instead on the three units in the proposed condominium that will not have parking spaces.

OP states on page 3 of the Supplemental Report that "[w]heter the proposed use will generate more or less traffic than a special exception use is not relevant to the application." However, the Applicant did not submit Exhibit F to demonstrate that the proposed use will generate more or less traffic than a special exception use. The Applicant submitted Exhibit F to reiterate the facts that he met with Advisory Neighborhood Commission ("ANC") 2D, the ANC in which the project is located, prior to filing the BZA application and obtained enthusiastic support for use of the building as 4 units, and that the community adamantly did not want a school use because that would bring cars, students, teachers, staff and make block overly congested. In sum, Exhibit F reinforces the Applicant's evidence that the proposal will provide a stabilizing effect on the neighborhood, will be consistent with the mix of uses in the area, and will significantly decrease the density of use of the building.

VII. Property Details

OP's original report, dated September 13th, states that there are other similar sized row houses used as one family dwellings within the surrounding area, and cites the following examples: 2133-35 Bancroft Place (8,682 sf), 2122 Bancroft Place (8,646 sf), 2111 Bancroft Place (8,646 sf) and 2132 Bancroft Place (8,226 sf). OP's September 13th report does not state that these are "gross building area" figures.

In response, at the public hearing, the Applicant submitted copies of records from the Office of Tax and Revenue indicating that 2135 Bancroft Place has 4 stories and a living area of 7,248 square feet; 2122 Bancroft Place has 3 stories and a living area of 4,168 square feet; 2111 Bancroft Place has 3 stories and a living area of 4,637 square feet; and 2132 Bancroft Place has 3 stories and a living area of 4,373 square feet.

The subject building is six stories, which is taller than all of the buildings cited by OP, and has a total building area of 9,024 square feet and a total living area of approximately 7,824 square feet. Whether comparing the height, the Gross Building Area or the Living Area, the subject property is much larger than the four largest single family homes that OP could find in the area.

VIII. Comprehensive Plan

Two important objectives for housing in the Ward 1 Plan[1] are to stimulate the production of new and rehabilitated housing to meet all levels of need and demand, and to discourage private housing from becoming vacant. 10 DCMR § 1205.1(a), (f). The Applicant's proposed development meets both of these objectives by converting a former school building into four

[1] As noted in OP's Supplemental Report, the subject property was located in Ward 1 at the time of adoption of the Comprehensive Plan. However, as result of the 2000 Census, the ward boundaries shifted and the subject property became part of Ward 2. Thus, since the subject property was located within Ward 1 during the preparation of the Comprehensive Plan, relevant citations to the subject property are located within the Ward 1 plan.

condominium units, and thus adding to the housing stock in the city. Moreover, as the Applicant testified, the subject property was on the market for over 3-1/2 months and no individual or organization sought to purchase the property for any permitted matter-of-right or special exception use when it was on the market. Thus, the Applicant's proposed development will put the subject property to a rehabilitated housing use, consistent with the surrounding area, as opposed to letting it sit vacant for an indefinite amount of time.

As shown on OP's Report to the Zoning Commission Regarding the Comprehensive Plan Implementation, dated May 23, 1991, the moderate density residential land use category includes R-3, R-4, R-5-A and R-5-B zone districts. Thus, the Applicant's proposed multifamily residential use is not inconsistent with the Comprehensive Plan's designation of the subject property in the moderate density residential land use category, and is not inconsistent with Sections 1231.1(d) or 1231.1(m) of the Comprehensive Plan.

IX. Conclusion

For the reasons stated above, combined with Applicant's testimony and evidence presented in this case, the requested relief meets the applicable standards for use and area variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted,

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A

MAY 23, 1991
O.P. REPORT TO Z.C. RE: COMP. PLAN IMPLEMENTATION

ZONING CONSISTENCY CHART

Adopted Comprehensive Plan Land Use Categories	Zone District
Residential Land Use Categories	
"Low Density: Single-family detached and semi-detached housing are the predominant uses";	R-1, R-2
"Moderate Density: Row houses and garden apartments are the predominant uses; may also include low density housing";	R-3, R-4, R-5-A, R-5-B
"Medium Density: Multiple-unit housing and mid-rise apartment buildings are the predominant uses; may also include low and moderate density housing";	R-5-B, R-5-C*
"High Density: High-rise apartment buildings are the predominant uses; may also include low, moderate and medium density housing";	R-5-D*, R-5-E*
Commercial Land Use Categories	
"Low Density: Shopping and service areas that are generally low in scale, character and activity and that provide a limited range of retail goods and services are predominant uses";	C-1, C-2-A
"Moderate Density: Shopping and service areas that generally provide a much broader range of goods and services are the predominate uses. Chain drug stores and grocery stores as well as branches of department stores, some specialty shops, and personal service establishments may be present";	C-2-A, C-2-B, C-3-A

"Medium Density: Shopping and service areas that generally offer the largest concentration and variety of goods and services outside the Central Employment Area are the predominant uses. Most customers arrive by car, bus or subway";	C-3-A, C-3-B
"Medium-High Density: Shopping and service areas that genreally offer the largest concentration and variety of goods and services outside the Central Employment Area are the predominant uses. Most customers arrive at medium-high density commercial land use areas by car, bus, or subway";	C-3-B, C-3-C
"High-Density: The business and retail heart of the District and Metropolitan area includes a mix of employment, retail, office, cultural and entertainment centers";	C-3-C, C-4, C-5
Mixed Use Land Use Categories (Residential-Commercial)**	
Low to Moderate Density Mixed Use+	C-2-A, C-2-B
Moderate to Medium Density Mixed Use	C-2-B, C-3-A, C-3-B, W-1, W-2, SP-1
Medium to High Density Mixed Use	CR, C-2-C, W-3, SP-2
High Density Mixed Use - Central Employment Area	DD/C-2-C, DD/C-3-C, DD/C-4

NOTE: This chart must not be used as the sole determinant of zoning consistency with the Comprehensive Plan. It is a beginning point for analysis, which must include consideration of other planning designations and policies in the Comprehensive Plan as well as localized study of the area or property being reviewed for zoning consistency.

Overlay zones are not included as they apply to specialized situations and locations. Note that an overlay zone may modify the base zone or zones by means of either restrictions, incentives or a combination of the two. An overlay may thus affect the preliminary classification system presented above.

* A new, mid-rise, medium-density residential zone is being recommended to the Zoning Commission for adoption. This will fill a long-standing need for a zone in between the R-5-B and R-5-C zones. Assuming adoption of this new zone as R-5-C, the existing R-5-C zone (map and text) would be redesignated R-5-D, and the existing R-5-D zone would become R-5-E.

** There are a few locations where institutional, PTE and open space uses are part of a mixed use designation. These locations will have to be judged individually.

+ There are subcategories of commercial-residential mixes within most of these mixed use categories, e.g., moderate residential with medium commercial, medium commercial with moderate residential, etc. Thus, the specific mix indicated for the location will be considered in determining the recommended zone district, taking all other factors into account.

B


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115' - SF RESIDENTIAL
160' - COMM
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2532
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21ST