Holland Knight

Tel - 202 955 3000
Fax - 202 955 5564

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006
www.hklaw.com

RECEIVED
D.C. OFFICE OF ZONING
2005 NOV 30 PM 3:44

MEMORANDUM

BY HAND

Date: November 30, 2005

To: Board of Zoning Adjustment

From: Christopher H. Collins

Re: BZA Case No. 17388 –
1360 Kenyon Street, N.W.

CHRISTOPHER H. COLLINS
202-457-7841

Internet Address:
chris.collins@hklaw.com

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17388
EXHIBIT NO. 29

The following information is submitted in response to the Office of Planning's Supplemental Memorandum of November 23, 2005. For ease of reference, we have used the same headings used by OP in its Memorandum.

1. *Applicant's Economic Feasibility Analysis*.

Attached as Exhibit A is a Memorandum from the Applicant's expert real estate economics witness, Hans Wydler, which gives a point-by-point response to the OP's arguments on pages 2 and 3 of their Report.

With respect to item #1 on page 2 of the OP Report, the Applicant notes that the discrepancy between the numbers is due to the difference between the "gross floor area" of the basement unit (a portion of which is cellar, and therefore not included in gross floor area), and the actual size of the basement unit, including both gross floor area and cellar floor area.

In addition, with respect to item #3 on page 2 of the OP Report, Mr. McGhee, the expert architect witness, has verified these figures, and they confirm his testimony of record. Specifically, the existing configuration provides usable, occupiable area (i.e. "salable square footage") of 72 percent. The new plans for the five-unit configuration result in 84.3 percent salable square footage.

The Office of Planning notes a "major concern" that the Applicant's economic feasibility study was completed prior to placing an offer on the subject property. This is standard operating procedure in the real estate business. It would be irresponsible to proceed with the purchase of this property without undertaking an economic feasibility study. OP also expresses concern that the Applicant proceeded to purchase with the presumption of obtaining variance relief. Mr. Taylor testified at the public hearing that he understood that risk, and based his actions upon the outcome of his due diligence studies, including his meetings with the Zoning Administrator, the ANC and neighboring residents, and a review and analysis of the Zoning Regulations and the history of the prior use of the property. The fact that he took that

Board of Zoning Adjustment
District of Columbia
CASE NO. 17388
EXHIBIT NO. 29

risk (as all real estate investors take risks) should have no bearing upon whether the test for variance relief is satisfied in this case.

2. *Applicant's Rebuttal to the Report of OP*.

In response to OP's statements in this section of their Memorandum, it is important to note that the Applicant presented substantial evidence and testimony indicating how the three-part variance test has been met in this case. The Applicant's rebuttal to the OP Report that was submitted in this case does not represent the entire rationale for the variance test.

Under the discussion of "Test 1", OP has attached to its report a plat indicating a variety of uses, to support its contention that the property does not meet the "exceptional situation or condition" standard. The Applicant's expert zoning and planning witness conducted a study of a larger area than that shown on the OP plat, including all of the R-4 properties bounded by 14th, Park, Sherman and Harvard. In that area, there are a total of eleven (11) walk-up apartment buildings. Nine (9) of those are buildings originally constructed as apartment buildings. There is also a three-story apartment house/tenement house with a certificate of occupancy as such on Park Road. The subject building is the only four-story, nine-unit, walk-up row building apartment house conversion in the area. Surely this constitutes an exceptional situation or condition.

OP indicates that there was no nexus shown between the exceptional situation or condition of the property and the need for an enlargement of the property. In fact, there was substantial evidence and testimony on this issue. Mr. McGhee, the expert architect witness; Mr. Williams, the expert zoning and planning witness; and Mr. Taylor, the Applicant, all testified as to the exceptional situations and conditions affecting the property. Specifically, the pre-1958 building contains nine very small residential "tenement" units, and there are no other similar row buildings in the entire area that have been converted to walk-up apartments for such a large number of sub-standard size multiple dwelling units. Further, these units have been occupied as short-term transient units, and could continue to be so occupied. Mr. McGhee and Mr. Wydler, the expert real estate economic witness, testified that in order to create dwelling units that would respond to the market demand for the area, the units would need to be larger than the current configuration. A configuration with only one unit per floor, rather than the current configuration with two units per floor, simplifies the egress issues and provides each unit with two means of egress. The proposed configuration of one 2-bedroom unit per floor also responds most directly to the market demand for dwelling units in the area. As Mr. Wydler testified, the number of units proposed is necessary in order to make the project economically feasible. The proposed addition was purposely designed so that it does not increase the lot occupancy and does not increase the height of the building.

Under the sub-heading of "Test 2", OP takes the position that a reduction in the number of units, from 9 to 5, does not constitute a reduction in density. However, in other planning studies and analyses, OP itself has used the number of dwelling units in a building or in an area to express the relative density of the building or area. Moreover, the Applicant has submitted substantial evidence and testimony to indicate how the strict application of Section 2001.3 would impose a practical difficulty.

Under the sub-heading of "Test 3", OP seems to suggest that the Board is not authorized to permit variances from Section 2001.3. The Applicant has provided substantial evidence and testimony indicating that the requested relief in this case can be granted without substantial to the public good, and without substantially impairing the intent, purpose and integrity of the Zone Plan.

3. *Conclusion*.

The Applicant has submitted substantial and testimony, including expert testimony, to demonstrate satisfaction of the three part variance test in this case. OP indicates in its Memorandum that it "strongly encourages the rehabilitation of vacant or derelict properties for new housing". Simply stated, the subject property cannot be rehabilitated for new housing to meet the market demand in this area, without the small additions to the building as proposed in this Application. The additions are modest, and do not increase the lot occupancy or the maximum building height, over the current conditions.

OP suggests that there are only "limited grounds for approval of a variance to this section of the Zoning Regulations". We are unaware of any such published limited grounds. Each application is to be judged on its own merits. In this case, we believe that the Applicant has demonstrated through substantial and testimony that the variance relief in this case is justified.

Thank you.

CHC/skp

cc: Joel Lawson, Office of Planning (by e-mail)
Robert Taylor (by e-mail)

3416529_v1

Hans L. Wydler

Memo

To: Chris Collins, Holland & Knight

From: Hans L. Wydler

CC: Robert Taylor

Date: November 30, 2005

Re: Response to Supplemental Report – BZA Case #17388

Dear Chris,

Below please find my response to Ms. Ellen McCarthy's "Supplemental Report" re BZA Case #17388, regarding 1360 Kenyon Street, NW.

Response to Bulleted Items:

Bullet #2
Ms. McCarthy questions why we used the same construction cost / sq. ft. for both scenarios ("AS IS" as well as "W Addition") and conjectures that high renovation costs may be the explanation. She is indeed correct. The planned renovation is a major, Level 3 renovation requiring major structural work and requiring that all new mechanical, electrical and plumbing systems be installed. Furthermore, as she points out, the basement floor needs to be "dug out" to accommodate greater head height for an acceptable unit. We estimate that any "normal" cost savings in renovations will be offset by these items.

Bullets #4 and #5
We are glad that Ms. McCarthy agrees with our assessment of the market. Regarding bullet #5, as we illustrated with our original testimony by including recent comparable unit sales in the area, the average price per unit is also inline with current market conditions.

Bullet #6
Ms. McCarthy takes issue with the Site Purchase Amount. As outlined in our testimony, the building was purchased by Mr. Taylor for the outstanding debt on the property. Not only did Mr. Taylor believe that the property was worth $1,030,000 when he purchased it in 2004, but so did the lender(s) who loaned the money to the previous owner. In fact, the lender(s) most certainly valued the property at a good bit higher than the price at which Mr. Taylor acquired the building.

It is also important to note that the economics of an apartment building, and hence, its market value, are very different than those of a single family home or row house. As Ms. McCarthy points out, 1360 Kenyon appears to be the only sale of a row house conversion to walk-up apartments in the District GIS system. Therefore, simply comparing the Subject Property to surrounding single family row homes is an unfair economic comparison. The key difference, and a major source of value for the Subject Property, is that it was formally used as a 9-unit, short-term rental building. This led Mr. Taylor to the following economic conclusions at the time of purchase:

EXHIBIT A

1. The opportunity to convert this building from 9 units to 5 or more units presents tremendous economic value that likely could not be realized with a single family row house with the exact same dimensions and location (go up in units would be difficult; going down from 9 is comparably easier). Also, this reduction in density is appealing to all parties.
2. Converting the building to condominiums would also serve an important need to the surrounding community by removing an eye-sore and source of chronic trouble.
3. Converting the building to condominiums would bring the building up to current codes and hence make it safer for future inhabitants.
4. The neighbors that he spoke with were all supportive of Mr. Taylor's plans.

Given the reduction in density, the strong support of the community, the limited scope of his request, and advice from the Zoning Administrator counsel that his request met the 3 requirements for a zoning variance, Mr. Taylor determined that he had a strong probability (75%+/-) that the BZA would approve his request. Based on this assessment, he decided to proceed with the purchase and take his chances.

Bullet #7
The vast majority of the architectural and engineering costs with and without the addition have already been incurred, in part, to prepare for the zoning adjustment request. Any other variance is simply too small to be material.

Bullet #8
As is the case with the items outlined in Bullet #7, the costs associated with applying for a zoning variance are incurred whether or not the zoning variance is approved or not.

Bullet #9
The Finance/Carrying costs are driven by the time it takes to deliver finished units to market. Because of the length of time it takes to apply for a zoning variance (whether or not it is approved) and receive permits, etc., coupled with the fact that the construction time for either scenario is roughly the same, we determined that any variance in the carrying cost was also too small to be material.

Bullet #10
The variance in insurance cost under either scenario is also too small to be material.

Bullet #11
Correction: Average cost per unit for 4 units in the "AS IS" would be about $519,757, not $518,299; and $462,624 per unit for 5 units in the "W Additions" scenario, not $461,084.

Discussion of Tax Assessments as Basis for Market Value
Ms. McCarthy provides a "cursory examination" of about 65 dwelling units /buildings sold between the end of 2003 and mid 2005. Without knowing the specific parameters of her search and which properties she is referring to, it is impossible to verify or comment on her analysis. That being said, using tax assessments as a way to determine relative market value for a group of properties is highly inaccurate, at best. When trying to determine the market value of a specific property, it is nothing more than folly.