



DONOHUE & STEARNS, PLC

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November 13, 2018

Via IZIS

Board of Zoning Adjustment for the
District of Columbia
441 4th Street, N.W., Suite 200S
Washington, D.C. 20001

Re: BZA Application No. 19823 – 3920 Alton Place, N.W.
Applicant's Opposition to Motion to Exclude Expert Testimony

Dear Members of the Board:

On behalf of Wisconsin Avenue Baptist Church ("WABC") and Sunrise Senior Living, the applicants in the above-referenced case, we hereby oppose the motion filed by the Tenleytown Neighbors Association ("TNA") to exclude the expert testimony of Alice Katz filed on November 5, 2018.

The testimony of Ms. Katz is highly relevant to the application as she will provide expert testimony on the demand for and economic feasibility of an assisted living facility on this particular site, which is the only mission-compatible use that will allow WABC to continue its religious purposes on land it owns. Her testimony goes directly to the appropriateness of this use as a special exception, and to the practical difficulties prong of the area variance test, where consideration of economic feasibility is an appropriate consideration. *See Monaco v. District of Bd. of Zoning Adj.*, 409 A.2d 1067, 1072 (D.C. 1979), *Gilmartin v. District of Columbia Bd. of Zoning Adj.*, 579 A.2d 1174 (D.C. 1990); *Tyler v. District of Columbia Bd. of Zoning Adj.*, 606 A.2d 1362 (D.C. 1992).


TNA's other arguments are also unavailing. First, contrary to TNA's assertion, Sunrise Senior Living has an equitable interest in the WABC property as a contract purchaser of the land and therefore the needs of a continuing care retirement community ("CCRC") on this property are appropriate considerations of this Board. Moreover, Sunrise is not proceeding in this application alone. It is jointly being processed with WABC, the current owner of the site. If the application is approved, a condominium regime will be created for the project, with WABC owning the church and Sunrise owning the CCRC portion of the building. Consequently, the confluence of needs flowing from the church and the proposed CCRC use are properly before the Board, including the economic feasibility of a CCRC.

Second, TNA is flatly wrong in asserting that Ms. Katz's testimony is being offered as a "presentation to potential investors" and to expand the jurisdiction of the Board to the "financial viability of businesses" necessitating the production of "accounting and financial books of all applicants." As noted above, economic feasibility factors are proper considerations for this Board. They do not, however, demand an applicant to open its accounting and financial books; rather, it is only necessary to provide evidence to support the economic viability claim and nothing more.

For the foregoing reasons, the applicants respectfully request the Board to deny TNA's motion to exclude the expert testimony Ms. Katz.

Respectfully submitted,

DONOHUE & STEARNS, PLC

By: 
Mary Carolyn Brown

cc: Maxine Brown-Roberts, OP (via email)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing opposition to exclude the testimony of applicant's expert witness was served November 13, 2018, via email, on the following:

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