

# SUPPLEMENT TO HEARING STATEMENT

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639 ATLANTIC STREET SE BZA NO. 20121

## RELEVANT CASE LAW

1. GILMARTIN V. DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, 579 A..2D 1164 (“PALMER”)
2. PALMER V. BOARD OF ZONING ADJUSTMENT, 287 A.2D 535 (“GILMARTIN”)

# INTERPRETATION OF THE VARIANCE LAW IN “PALMER” AND “GILMARTIN”

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- *“To support a variance, it is fundamental that the difficulties or hardships be due to unique circumstances peculiar to the applicant's property and not to general conditions in the neighborhood”*
- *“The statute does not preclude the approval of variance where the uniqueness from a confluence of factors” (“Gilmartin”)*
- Confluence of factors affecting subject property are unique circumstances peculiar to the applicant’s property and not to general conditions in the neighborhood.

# CONFLUENCE OF FACTORS

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- The fact of the subject property's uniqueness as the only single-family detached dwelling in its neighborhood of location which predominantly comprise semi-detached dwellings on smaller lots and apartment houses
- The fact of the physical shape and size of the subject property for its zone district of location, comprising over eight thousand square feet where lot sizes are predominantly less than three thousand square feet
- The unique features of the interior of the existing building, which include five-foot wide corridors, commercial grade fire alarm and sprinkler systems, self-closing doors, commercial exit signs and other accessibility features, given that the building was constructed for from inception for purposes of a Community Residence Facility for the handicapped (CRF).
- The fact of the history of use of subject premises as a CRF and never having being occupied for purposes of a private residence
- The fact of the commercial tax classification (see Exhibit # 48)
- The fact of applicant's good faith reliance upon DCRA's direction in incurring expenses for repairs to make premises compliant with construction codes for commercial use

# EXTRAORDINARY AND EXCEPTIONAL SITUATION OR CONDITION

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- Term defined in reference to economic, geographic or topographic situation or condition connected with or affecting the lot for which the variance is sought.
- Economic situation of subject property of application is the inability to attract a conforming use which results in a fair and reasonable return or reasonable income.
- Maximum rental income is approximately \$3,000.00, whereas income necessary for debt service and other property maintenance cost is approximately \$4,600.00 resulting in negative cash flow.
- The large size of subject property for its geographic location is directly related to its economic disadvantage.

# PRACTICAL DIFFICULTIES AND UNDUHARDSHIP

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- New Jersey Supreme Court expressed the view where peculiar and exceptional practical difficulties exist so does undue hardship.
- Applicant concedes that the higher burden of exceptional and undue hardship is the applicable standard for the granting of the use variance.
- Subject property's practical difficulty is the inability to attract conforming use after nearly 2 years of advertisement of property for lease without pre-condition as to use of interest.
- Subject property's undue hardship is that neighborhood rent schedule comparable is less than the fair and reasonable return or reasonable income – (See exhibit #49)

# USE VARIANCE CAN BE GRANTED

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- When a situation arises where reasonable use cannot be made of the property in a manner consistent with the zoning regulations
- Inability to put property to a more profitable use or loss of economic advantage not sufficient to constitute a hardship.
- Regulations must be shown to preclude use of a property for any conforming use with a fair and reasonable return.
- Use of subject premises for residential use results in negative cash flow.
- Use of subject property will not produce a reasonable income or any income at all.

# REDEVELOPMENT OF A PROPERTY

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- Requires complete demolition or raze of the existing structure
- Board is constrained to review the application before it on it's merit.
- Reasonable use standards go to the use of subject property as it exist at the time of application.
- Neighborhood sales comparable does not support redevelopment of subject property as a viable project – (See Exhibit #70).

## **SUBSTANTIAL DETRIMENT TO PUBLIC GOOD AND SUBSTANTIAL IMPAIRMENT OF INTENT, PURPOSE AND INTEGRITY OF THE ZONE PLAN**

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- Subject property was constructed for purposes of intermediate Care Facility for the mentally challenged – 6 residents & 2 rotating staff
- Subject premises has never been occupied as a private residence or for residential use.
- OP Reports state that the medical office use “should not cause substantial detriment to the public good” and the OP is “supportive neighborhood serving medical offices”
- Loss of residential dwelling unit does not constitute substantial harm to the intent and purpose of the zone plan because the loss temporary and not permanent.
- The Board has the discretion to mitigate any potential harm by condition of approval with a sunset or expiration date.

# NO SUBSTANTIAL HARM OR DETRIMENT TO THE ZONE PLAN

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- Medical office use or the home offices of a medical practitioner or dentist is permitted in the R-2 zone district under the Home Occupation provisions see U, §251.1 (h), provided that not more than 2 persons not resident on the subject premises shall be permitted as employees.
- The proposed medical office use will have only one employee
- The medical office use will operate between the hours of 9:30 AM - 5:30 PM Wednesdays and Fridays, and 1:30 PM – 5:30 PM Thursdays. Mondays and Tuesdays are off-site client counselling visits days
- In the three days of office operation, not more than 5 – 7 clients will be present on premises on any given day
- The proposed office will serve neighborhood clients in close proximity to the subject property, hence will not result in increase in traffic impact or affect street parking.
- The subject property has capacity for an on-premise parking area which will accommodate four to five automobiles.
- The objective of the owner is to bring mental health services to an underserved area so designated by the National Health Service Corps (NHSC), as a Health Professional Shortage Area (HPSA); hence there is inherent public good served by the location of the use at subject premises

# CONCLUSION

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- Application complies with the three-pronged variance test.
- Applicant is unable use the property for a conforming use which produces a fair and reasonable return or a return on income.
- The proposed medical office use will serve the public good of bringing mental health services to a designated underserved area.
- Applicant respectfully request approval of the relief sought for the all the foregoing reasons.