Edward Bentley
3725 Macomb St., N.W., Apt. 305
Washington, DC 20016
Email: EdwardGBentley@aol.com
Tel: (202) 629-2944

May 1, 2022

Frederick L. Hill
Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, N.W., Suite 200S
Washington, DC 20001

Re: Comments in Opposition -- BZA Case # 20699; Case Name: 3801 Macomb St., N.W.

Dear Mr. Hill:

I am writing in reference to the Board of Zoning Adjustment ("BZA") application for the redevelopment of 3801 Macomb St., N.W., denominated BZA Case # 20699. I have lived at 3725 Macomb St., N.W., the building on the other side of 38th Street from this property, for the last 17 years. I can tell you that the neighborhood is up in arms over this bizarre and outrageous proposal. The owners are essentially trying to use a use variance to rezone their property. This, they cannot be permitted to do.

The owner cannot point to any legally cognizable hardships at all – none. He admits he can build two additional single-family houses on his property. This is what the applicant is entitled to under the zoning code. The applicant should be content with that.

The alleged hardships identified by the applicant are almost entirely economic. The case law is absolutely clear, however, that when it comes to *use* (as opposed to *area*) variances, economic factors may only be considered, at most, when compliance with zoning provisions would deprive the property of *all beneficial use*. It is otherwise *forbidden* to consider economic factors.

The applicant has a grandfathered 8-unit certificate of occupancy, which also makes this property far more remunerative for him than it otherwise would be. The fact that the apartment layout may be less than ideal – something to be expected when one divides up a single-family house – has absolutely no bearing on the question of whether to grant a use variance. The fact is, his certificate of occupancy, however it was originally obtained, is not subject to question here. He can continue to use it whatever happens.

Furthermore, as a *matter of right,* the applicant can build two single family houses on his property. I have not seen a house in this area sell for less than $2 million in a long time. This is sufficient to pay for any renovation.

Board of Zoning Adjustment
District of Columbia
CASE NO.20699
EXHIBIT NO.37

Given these facts, once the caselaw is examined, it will be quite evident that ***it is legally impossible to increase or extend the current nonconformity on this site in any manner.*** The applicant must be confined to what he can build as of right.

Let there be no mistake. The property in question is *currently* a large, gracious, *single-family home* built in 1909.[1] The owners state, in both their Prehearing Statement and their Applicant's Statement, that the structure "has been used continuously as an apartment building since its construction," but this is inaccurate.[2] Indeed, the owners concede that the structure was "at some point converted to eight residential units."[3] In the 1970s, the owner of the building evidently sought to turn the house into a group home. This explains why the certificate of occupancy permits eight units, because back then that was the limit for the pertinent special exception.[4] *There was never any special exception in this zoning district for an apartment building, however.*

I. THE APPLICANT CANNOT RECEIVE A USE VARIANCE FOR THE JUSTIFICATIONS GIVEN, BECAUSE COMPLIANCE WITH R-1-B ZONE REQUIREMENTS WILL NOT DEPRIVE IT OF ALL BENEFICIAL USE

This property is located in the R-1-B zone, where it is put to a nonconforming use, and has been ever since its internal subdivision.[5] The zoning code is quite clear on nonconforming uses. Without a variance, "nonconforming structures or uses may not be enlarged upon, expanded, or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same zone district." 11-C DCMR § 201.1. Although such uses may be grandfathered (*Id.*, § 2.1.2), the code states "[i]t is necessary and consistent with the

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[1] The District of Columbia Public Library provides access to a database, called HistoryQuest DC, which contains historical building permit information. The building permit for 3801 Macomb Street, NW, dated June 29, 1909, gives the purpose of the structure as "***dwelling.***" This may be compared to surrounding buildings built in a similar time period, such as 3720 Macomb, which was built in 1923, and for which the purpose is described as "***apartment***", or 3711 Macomb, built in 1925, for which the purpose was described as "***store & apartment.***" Even in the early-20th century, if a building was intended to contain apartments, the building permit was marked with this information. 3801 Macomb Street, N.W. was clearly a single-family home. The HistoryQuest DC database may be found at https://dcgis.maps.arcgis.com/apps/webappviewer/index.html?id=4892107c0c5d44789e6fb96908f88f60.

[2] Prehearing Statement of 3801 Macomb Street, LLC, Ex. 22, p. 4 ("Prehearing Statement"); Applicant's Statement of 3801 Macomb St, LLC, Ex. 8, p. 4.

[3] Prehearing Statement at p.4, Applicant's Statement at 4.

[4] See *Speyer v. Barry,* 588 A.2d 1147, 1151 (D.C. 1991), reflecting that at the time that opinion was published, the limit for a special exception for a community-based residential facility was eight units.

[5] The R-1-B zone is intended to specifically preclude further development of multifamily housing. This zone is intended to "discourage multiple dwelling unit development." 11-D DCMR 250.2(f). The zone is intended to "[p]rotect quiet residential areas now developed with detached dwellings and adjoining vacant areas likely to be developed for those purposes" and to "[s]tabilize the residential areas and promote a suitable environment for family life." 11-D DCMR 300.1. "The R-1-B zone is intended to provide for areas predominantly developed with detached houses on moderately sized lots." 11-D DCMR § 300.3. The only development permitted as of right in this zone are fully or semi-detached single-family houses, with one single accessory apartment contingent on the house being owner occupied. 11-D DCMR § 201.1; 11-U DCMR § 250.1. Such houses must have yards on the rear and sides. 11-D DCMR §306.1 (rear yard); 11-D DCMR §§ 206.1,206.2 and 206.6 (side yards). Lots must be at least 50 feet wide and 5000 square feet in size. 11-D DCMR § 302.1 Table D. The height limitation is 40 feet. 11-D DCMR § 303.2. Permissible lot coverage is 40%, and permissible impervious surface area is 50%. 11-D DCMR § 304.1 Table D; 11-D DCMR § 308.1. Clearly this proposed development does not fit the requirements of this zone at all.

establishment of the separate zone districts under this title that all uses and structures incompatible with permitted uses or structures shall be regulated strictly and permitted only under rigid controls, to the extent permitted by the Zoning Act of 1938." *Id.*, § 201.3. The code states specifically that "[a] nonconforming use of land or structure shall not be extended in land area, gross floor area, or use intensity; and shall not be extended to portions of a structure not devoted to that nonconforming use at the time of enactment of this title", and that "[a] new structure shall not be constructed to contain a nonconforming use, and any addition to an existing structure containing a nonconforming use shall be devoted to a conforming use." *Id.,* §§ 204.1 and 204.3.

It is the deliberate policy of the zoning code of the District of Columbia that nonconformities are to be progressively *eliminated, not extended – let alone magnified. See Lenkin v. D.C. B.Z.A.*, 428 A.2d 356, 358-59 (D.C. 1981) (noting that "one of the major purposes of the Zoning Regulations . . . [is] the gradual elimination of existing nonconforming structures and trades" and that there is a "clear regulatory objective against nonconforming uses, and since nonconforming uses are not favored, any interpretation of the regulations which expands the prerogatives of nonconforming users is undesirable," and that "nonconforming uses may be continued only if no structural alteration or enlargement is made, or new building erected" (internal quotes, brackets and ellipses omitted)); *Sheridan-Kalorama Neighborhood Council v. D.C. B.Z.A.*, 411 A.2d 959, 963 (D.C. 1979) (also noting "clear regulatory objective against nonconforming uses," that "such uses are not favored," and that "any interpretation of the regulations which expands the prerogatives of nonconforming users is undesirable"); *see also West End Citizens Ass'n v. D.C. B.Z.A.*, 112 A.3d 900, 903 (D.C. 2015) (noting that in a prior unpublished opinion they had found the expansion of a nonconforming use from one floor of a building to the rest of the building impermissible).

The owners admit that this certificate of occupancy was the earliest they could locate for the property, which is believable, because this is almost certainly when it ceased to be a single-family home. This certificate of occupancy, dated March 24, 1975[6], was granted to Yudai Yavalar, the father of Ata Yavalar, whose family owns 3801 Macomb Street, LLC, the shell company under which the property is currently titled. It should be noted that whenever the owners stopped using it as a group home, they needed to seek a variance at that point, *before* they started using it as an apartment building. There is no evidence they ever did. Now they seek a use variance to massively expand this nonconformity.

Variances come in two types, area variances and use variances. 11-X DCMR § 1001.1. Applicants always bear the burden of proof to justify the granting of a variance, even if they present no evidence. 11-X DCMR 1002.2. Area variances are simply requests to depart from certain required characteristics within a zone such as various dimensions, or for any variation that does not fall under the use variance category. 11-X DCMR §§ 1001.2 and 1001.3. To bear its burden, "[a]n applicant for an area variance must prove that, as a result of the attributes of a specific piece of property . . . the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of [the] property." 11-X DCMR § 1002.1(a).

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[6] The applicant's Prehearing Statement states that the oldest Certificate of Occupancy dates from 1973, but if such a Certificate exists, they have not inserted it into the record. Prehearing Statement, Ex.22, p. 4. It is therefore presumed that "1973" is simply a typo. Either that, or for some reason they do not want it in the record.

By contrast, "[a] use variance is a request to permit: (a) A use that is not permitted [as a] matter of right or special exception in the zone district where the property is located; (b) A use that is expressly prohibited in the zone district where the property is located; or (c) An expansion of a nonconforming use prohibited by" the provisions on nonconformities. 11-X DCMR § 1001.4. The burden of proof is more stringent: "An applicant for a use variance must prove that, as a result of the attributes of a specific piece of property . . . the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner." 11-X DCMR § 1002.1(b). Therefore, a use variance would have been required to change from a group home to an apartment house. And as the applicants recognize, a use variance is required for the expansion they propose now. This distinction is important, because the applicant frequently relies on case law that applies to *area* rather than *use* variances.

Case law establishes that, in regard to *use* variances, unless the zoning code has the effect of depriving a property of *any beneficial use,* it is impermissible to examine the economic burdens on (or benefits to) the applicant at all. DC Court of Appeals opinions have uniformly held that for the purposes of ***use*** as opposed to ***area*** variances, the mere fact that a different use could be more profitable, that the owner might lose some economic advantage, or that it might cost the owner large amounts of money to conform to the present zoning cannot constitute sufficient hardship to grant a variance. In *Palmer v. D.C. B.Z.A.,* 287 A.2d 535, 542 (D.C. 1972), the Court stated:

> The authorities widely recognize, as petitioners contend, that the hardship envisioned by the statute must be great. A ***use*** variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations. ***An inability to put property to a more profitable use or loss of economic advantage is not sufficient to constitute hardship***. 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?

Palmer at 542 (footnotes, parentheticals, and quotes omitted) (some emphasis original, some supplied). In *Taylor v. D.C. B.Z.A.,* 308 A.2d 230 (D.C. 1973), the applicant wanted to build 27 row houses in an R-1-B district, the same district as the one that applies to the property of the present applicant. The Court found that essentially what the applicant wanted was a rezoning, not a variance, and that he had created his own hardship, but more importantly, that Court stated "[t]he Board simply has ***no authority to grant a variance in order to assure the petitioner a profit***." *Id.* at 236 (emphasis added). *See also Salsbery v. D.C. B.Z.A.,* 357 A.2d 402, 405 (D.C. 1976) (accord); *Bernstein v. D.C. B.Z.A.,* 376 A.2d 816, 820 (D.C. 1977) ("Moreover, it is well established that a mere desire to use property in a given manner, or in a manner designed to return a greater profit, does not constitute a showing of an undue hardship that will support the granting of a use variance"); *Silverstone v. D.C. B.Z.A.,* 396 A.2d 992, 994 (D.C. 1979) (in a case involving a use variance, the Court stated "The Board, however, has no authority to grant a variance in order to assure the economic viability of the use of a particular property in a particular manner"); *Russell v. D.C. B.Z.A.,* 402 A.2d 1231, 1236 n.8 (1979) ("In the context of

use variances, this court has held an inability to put property to a more profitable use or loss of economic advantage is not sufficient to constitute hardship" (quotes omitted, italics original)).

In order to permanently resolve any ambiguity, the DC Court of Appeals decided to confront the issue of whether economic use of property can be considered in *Tyler v. D.C. B.Z.A.,* 606 A.2d 1362 (D.C. 1992). They stated:

> We have never held that proof of economic burden is irrelevant to the decision whether to grant an ***area*** variance. . . . Petitioners cite decisions arising in the context of ***use*** variances, where we ***have indeed*** held that ***the Board has no authority to grant a variance in order to assure the economic viability of the use of a particular property in a particular manner***.

Tyler at 1366-67 (quotes omitted, emphasis added).

The applicants make much of *Palmer v. D.C. B.Z.A.,* 287 A.2d 535 (1972) and *Gilmartin v. D.C. B.Z.A.,* 579 A.2d 1164 (D.C. 1990), but these were both ***area*** variance cases,[7] and *both* of these opinions note the rule that economic loss considerations are not appropriate in ***use*** variance cases. *Palmer* at 542; *Gilmartin* at 1170 (noting that the rule that a different use would provide the owner a greater return is irrelevant to variance consideration applies to use, rather than area variances). These opinions do not actually support the argument the applicants are making.

Neither does *Monaco v. D.C. B.Z.A.,* 407 A.2d 1091 (D.C. 1979), upon which applicants also rely. This case does not apply to the present property because it concerned a highly specific relaxation of variance standards that only applies to publicly necessary facilities, non-profit uses, and public service institutional uses; the rule simply does not apply to this case.[8] Indeed, that Court even stated "[w]hile a ***commercial user*** before the BZA ***might not be able to establish uniqueness in a particular site's exceptional profit-making potential,*** we consider that the BZA may be more flexible when it assesses a non-profit organization." *Id.* at 1098 (emphasis added). The applicants are clearly not entitled to rely on this relaxed standard. There was also an estoppel element to *Monaco* due to the fact that the applicant in that case had detrimentally relied

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[7] *Palmer* does not say so explicitly, but the variance sought was for the requirement that parking be located within 800 feet of the lot line, so it should be categorized as an area variance. *Palmer* at 537. It should be noted that two other cases applicants rely on are area variance cases as well, namely *French v. D.C. B.Z.A.,* 628 A.2d 1023 (D.C. 1995) and *Capital Hill Restoration Society, Inc. v. D.C. B.Z.A.,* 534 A.2d 939 (D.C. 1987).

[8] This – highly specific – relaxation of variance standards has been explored in a number of cases, including *Draude v. D.C. B.Z.A.,* 582 A.2d 949 (D.C. 1990), *Dupont Circle Citizens Assoc. v. D.C. B.Z.A.,* 182 A.3d 138 (D.C. 2018), *Neighbors for Responsive Government, LLC v. D.C. B.Z.A.,* 195 A.3d 35 (D.C. 2018), *Citizens for Responsible Options v. D.C. B.Z.A.,* 211 A.3d 169 (D.C. 2019). Although the applicant has not mentioned it, I wish to point out that *Neighbors for Responsive Government* ("*NRG*") involved the transitional housing facility around the block from the proposed development, and I would like to address it, lest applicant attempt to make use of it. For one thing, this case was entirely decided on the basis of the public need standard that does not apply to this case. But the project was also on the other size of the zoning line in the RA district. As that opinion explains, all detrimental impacts were isolated to the site upon which it stood, and did not affect people on the other side of the zoning line. Further, because of the applicable special exceptions, that project only needed *area* variances rather than *use* variances. Finally, there was much less public opposition to that project, which was erected by the City to serve a demonstrated public need, than there is to the present proposed project. All of this was explained in the *NRG* opinion. Applicants cannot make use of it, or any other "public service" cases.

in good faith on past actions of the zoning authorities which had induced it to believe that it would be able to use the property in the manner intended. *Id.* at 1097-98. This does not apply to the present case, since they cannot show any good faith detrimental reliance on any action by the zoning authorities indicating they could do what they propose.

The reliance of the applicants on *Clerics of Saint Viator, Inc. v. D.C. B.Z.A.*, 320 A.2d 291 (D.C. 1974) also avails them nothing. The *Saint Viator* Court reversed the BZA's denial of a use variance and remanded to the Board to take further evidence because the unique nature of the property, which had been constructed exclusively to serve an institutional need for which demand no longer existed, meant that it was possible that denial would eliminate ***all beneficial use*** the owner could make of the property, so further evidence was necessary to establish whether this was the case. Subsequent case law has interpreted *Saint Viator* in this manner. *See Silverstone v. D.C. B.Z.A.,* 396 A.2d 992, 994 (D.C. 1979) ("Unlike the seminary [in *Saint Viator*], the property here can continue to be used as a single-family residence; nothing in the record demonstrates that the property is incapable of being used in a manner consistent with the zoning regulations"); *Russell v. D.C. B.Z.A.*, 402 A.2d 1231, 1236 (D.C. 1979) (citing *Saint Viator* as standing for the rule that "where a property owner is deprived of *all beneficial use* of his property he is entitled to a variance" for constitutional reasons (italics added)). As the Court of Appeals noted in a similar case where a building was literally unusable in a manner consistent with the zoning code for its original purpose once its tenant went out of business, the test is whether "the property cannot be put to ***<u>any</u>*** conforming use with a fair and reasonable return arising out of the ownership thereof." *Downtown Cluster of Congregations v. D.C. B.Z.A.,* 675 A.2d 484, 491-92 (D.C. 1996) (finding, at page 493, that was "impossible to find another user for the building which complies with the zoning regulations").

Also, unlike in the present project, the *Saint Viator* Court specifically noted that "[t]here can be no claim that the proposed use, by its appearance will adversely affect the neighborhood, since the new use *will not require exterior structural changes*" and that this provided a contrast to *Taylor*, discussed above, because the development in *Taylor* would have changed the character of the neighborhood. *Saint Viator* at 295 n.6 (italics added). In the instant case, the applicants want to tear down the existing house and erect a monster.

This brings us to the last case the applicants rely on, *Oakland Condominiums v. D.C. B.Z.A.,* 22 A.3d 748 (D.C. 2011). This is an extremely odd opinion that can only be understood in the context of its facts. It appears on its face to approve the consideration of economic conditions when considering a use variance – the only case in existence which so appears – but in actuality it fits into the *Saint Viator* line of cases. The short, three paragraph analysis of undue hardship in *Oakland,* at 754-55, did not mention the *Tyler* rule at all and did not discuss the dichotomy between the appropriateness of financial considerations in use variances versus area variances at all. One wonders if it was brought to the panel's attention. The differences between the project in *Oakland* and the project at issue start immediately, with the fact that the use of the property in *Oakland* was ***permitted as of right.*** Furthermore ***it did not involve any change in the exterior of the building itself; the changes were entirely within the existing envelope of the building.*** In fact, it actually represented a ***reduction of intensity of usage*** when viewed against the background of the case.

The facts were as follows. The building in *Oakland* had been a 15-room boarding house. It was located in a district where, at the time it started to be used in that manner and to that scale, that use was permitted as of right, without any restrictions on the number of rooms. *Oakland* at 750-51. Its certificate of occupancy reflected this fact. *Id.* The rules in the district were later modified, but the use of the building as a 15-room boarding house was clearly a grandfathered nonconforming use. *Id.* The building was then sold to new buyers, who wanted to continue using it as it was. *Id.* The new buyers needed a new certificate of occupancy. *Id.* It should have been a simple process of issuing a new certificate that was identical to the old one, except for the substitution of the names of the new owners. *Id.* The city made a big mistake, however, and insisted that the new owners were only eligible for an eight-room certificate, without obtaining a variance. *Id.* The new owners were not knowledgeable regarding the land use process and regulations, and what followed was a comedy of errors by the city, which kept changing the permitted scale. *Id.* To make a long story short, the city granted them a building permit so that they could renovate the building to make it 12 rooms, but then after the owners had spent $1.1 million renovating the facility, the city tried to revoke the building permit and told the owners they needed a variance to increase the usage of the building (which had originally been 15 rooms) from eight rooms to 12 rooms. *Id.* at 750-51, 756. The owners therefore sought the use variance. *Id.* at 750-51. The BZA only considered the usage of the four additional rooms, and granted the use variance as to those rooms. *Id.*

On appeal, the Court of Appeals opinion clearly revolved around the injustice that had been inflicted on the owners. They should have been entitled to a certificate of occupancy allowing them to use the building exactly as the 15-room facility had been used (and the BZA below had admitted as much), but the city had forced them to cut it to eight rooms, and compliance with the restriction had potentially caused them to lose their nonconforming status through abandonment, forcing them to seek a variance just to raise the number of rooms to 12 rather than the original 15. *Id.* at 752-6. The Court found that that the issuance of the building permit to raise the occupancy to 12 rooms, which had induced the owners to spend $1.1 million renovating, induced good faith detrimental reliance on the part of the owners, essentially acting as an estoppel against the city, as in *Monaco,* above. *Id.* Further, the Court permitted the analysis to be restricted to the four rooms sought to be added; these rooms were part of a preexisting facility that had been in such use for decades, and they essentially ***could not be put to any use to which they were reasonably adapted without the use variance.***[9] *Id.* It was **in this context** that the Court of Appeals allowed the BZA to consider the economic burden of the owner. Noting that the standard for undue hardship was that the applicant's "property cannot be put to ***any*** zoning-compliant use for which it can be reasonably adapted," *Id.* at 754 (italics added), and having approved the BZA's action in restricting its view to just the four rooms under consideration, it agreed with the BZA that the four rooms could not be put to ***any economically viable use consistent with the zoning strictures***. *Id.* at 745-55.

[9] This is similar to cases where an applicant seeks to expand a non-conforming use that exists in one part of a building to another part of the building or the whole building, an issue has presented itself in the past. *See, e.g. Lenkin v. D.C. B.Z.A.,* 428 A.2d 356, 357 (D.C. 1981) (noting that the BZA had allowed a prior owner of a building to exchange one nonconforming use on the first floor to another and that "[i]t also permitted that owner to extend the nonconforming general office use to the second floor.").

Therefore, the *Oakland* opinion ***clearly*** fits into the *Saint Viator* line of cases. Aside from the estoppel aspect, these four rooms constituted property ***that could literally not be put to any other economic use***. Clearly, economic factors may be reviewed to make ***that*** determination, but there is ***absolutely no authority for them to be considered for any other purpose when analyzing whether a use variance is appropriate***. Indeed, understanding *Oakland* in any other way would mean that this panel opinion violates the long-established rule that panels of the Court of Appeals cannot overrule any prior Court of Appeals decisions; only the Court of Appeals sitting *en banc* can do that. *M.A.P. v. Ryan*, 285 A.2d 310,312 (D.C. 1971). Given the number of opinions explaining the dichotomy between area and use variances in regard to whether it is appropriate to take economic factors into consideration, especially the explicit rule in *Tyler*, it is clear that *Oakland*, like *Saint Viator*, simply indicates that economic considerations may be taken into account to determine whether conformity with the zoning regulations would deprive a property of ***all beneficial use***, but clearly economic benefits and burdens ***cannot be considered in any other way*** by the BZA when considering whether to grant a ***use variance***.

II. THE HARDSHIPS THE APPLICANT COMPLAINS OF WERE SELF-INFLICTED

The applicant is already in violation of their certificate of occupancy, because they admit in their application there is a *ninth* unit on the property. They claim that this occurred "prior to the Applicant's purchase of the Property,"[10] but that is a rather misleading statement considering that the Applicant is a shell company owned by the family of the man who evidently divided it into apartments in the first place.

The applicant is trying to leverage a self-imposed illegality to gain permission to do something the zoning code bans. The District of Columbia Court of Appeals has specifically said that an applicant cannot be allowed "to benefit from the illegal use of the premises and in effect establish the basis for a valid nonconforming use on a prior illegal use." *Lange v. D.C. B.Z.A.*, 407 A.2d 1058, 1061 (D.C. 1979). The applicant family internally subdivided this property themselves, and any difficulties they may encounter are self-imposed. A "hardship is self-created if it is later manufactured by an owner, that is, caused by improvements to the land constructed by the applicant with knowledge of the restrictions from which he or she seeks relief." *Foxhall Community Citizens Assoc. v. D.C. B.Z.A.*, 524 A.2d 759, 762 (D.C. 1987); *see also Salsbery v. D.C. B.Z.A.*, 357 A.2d 402 (D.C. 1976) (to same effect). These hardships can descend down the chain of title, for instance, "[t]he self-created hardship rule applies, for example, to owners who purchase property with actual or constructive knowledge of zoning restrictions from which they intend to seek administrative relief." *Id.* Considering that the owners of the shell company that technically owns this property clearly know about the restrictions (and have as long as they have owned the property), their knowledge could be imputed to the shell company when they transferred title to the property over to said shell company. The applicants have always had actual notice of these restrictions, and the shell company took the property with this constructive knowledge.

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[10] Prehearing Statement at 4, Ex. 22.

Indeed, there was never supposed to be any apartment building on this site, and the dubious nature of how they may have obtained a certificate of occupancy marked "apartments – 8 units"[11] covering the internal subdivision of a single-family house in a zone where apartment use is neither a matter of right nor a special exception – indeed, a zone that explicitly discourages such use – should not be something the owner can leverage to do something even more blatantly inappropriate with it.

III. **OTHER CONSIDERATIONS**

This project is a block away from Wisconsin Avenue. One of the great attractions of this area is the present tapering manner of land use. The block adjacent to Wisconsin Avenue is reserved for apartment buildings, but then there is a rapid transition off to a beautiful, green, stable, lower density district. The present configuration of the subject property works very well for this purpose, and a more intense form of land use was never intended; indeed, it would damage the street. A glance at the pertinent provisions of the Comprehensive Plan will support this. The Memorandum from the Office of Planning stating it does not support this project certainly does.

The edifice pictured in the application looks like the box a building came in[12]. This proposal would extend a high density use straight into a low-density neighborhood. These proposed units are intended to have *six* bedrooms *each, 48* bedrooms *total.*[13] And, who ever heard of a six-bedroom apartment? The applicant's transparent intention is to house an enormous number of American University students on a block of single-family homes.

The resulting parking problems will impact me personally. As an apartment dweller, I have to park on the street, and it is already very difficult to park here. A lot of traffic already uses Macomb Street between Wisconsin and Massachusetts Avenues. Macomb Street is not a large street. Cars usually have to wait to pass each other. This proposed project will have a parking lot that cannot possibly accommodate the number of cars *48 bedrooms* worth of tenants will have. Additionally, the proposed parking lot essentially backs up onto the single-family homes across the alley. It will be a huge eyesore. Most of the site is presently green lawns, but they would pave nearly all of it.

The whole thrust of the R-1-B zone is to preserve, as much as possible, the stable single-family nature of the district. The redevelopment the owner proposes for this property would cause it to, instead of being the buffer from other uses that it currently is, become a projection of those uses into a single-family neighborhood. Zoning lines are drawn where they are drawn for a reason, the current lines accurately reflect where the boundaries lie between different grades of development. These lines cannot be eroded around the edges, or ultimately, they exist for no purpose.

IV. **CONCLUSION**

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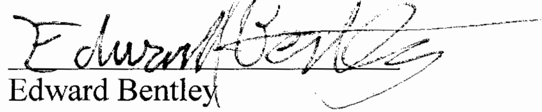
[11] Certificate of Occupancy, Ex. 14.

[12] Architectural Plans and Elevations, Ex. 6.

[13] Architectural Plans and Elevations, Ex. 6.

It is legally impossible to grant a use variance that would allow the applicants to expand the nonconforming use of the property in any manner, given the facts and law above. They must be confined to what they can do with the property as of right.



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