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REAL ESTATE ZONING LITIGATION ESTATE PLANNING WEALTH PRESERVATION

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September 27, 2010

Via E-Mail

Board of Zoning Adjustment
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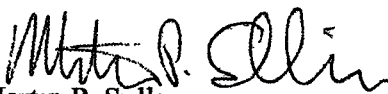
Re: Motion for Reconsideration of BZA Order No 18095

Dear Members of the Board,

Enclosed please find a Motion for Reconsideration of a Condition of BZA Order No. 18095, being filed on behalf of the Applicant.

Thank you for your consideration of this Motion.

Sincerely,


Martin P Sullivan

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18095

EXHIBIT NO. 33

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**BZA APPLICATION NO. 18095 OF RONALD MCDONALD
HOUSE CHARITIES OF GREATER WASHINGTON, D.C.**

**Hearing and Decision Date: September 14, 2010.
BZA Order No. 18095 Issued on September 17, 2010.**

MOTION FOR RECONSIDERATION OF CONDITION

The Board of Zoning Adjustment approved Application No. 18095 by Order dated September 17, 2010, granting Special Exception approval pursuant to Section 215 for a Religious Residence housing more than 15 persons. In Order No. 18095, the Board's Condition No. 1 limited the special exception approval to a term of five (5) years. There is no evidence in the record in support of such a condition. Therefore, pursuant to 11 DCMR §3126.2, the Applicant respectfully requests that the Board reconsider and remove the condition.

I.

Factual and Procedural Background

On May 4, 2010, Ronald McDonald House Charities of Greater Washington, D.C., Inc., ("Ronald McDonald House") and the subject property's contract purchaser, Servants of the Lord and The Virgin of Matara, Inc. (referred to herein as the "Applicant"), filed an application (the "Application") with the Board of Zoning Adjustment (the "Board"), pursuant to 11 DCMR §§ 3104.1 and 215, requesting special exception relief to operate a Religious Residence for more than fifteen (15) residents. Specifically, the Applicant requested approval to house no more than ninety-six (96) residents on the property located at 1326 Quincy Street, N.E. (the "Property").

Applicant's Statement The Applicant submitted a statement with the application (the "Applicant's Statement"), in which the Applicant provided, among other things, that: 1) stability

was crucial for a house of formation such as this proposed use, and particularly in the District of Columbia, where the Applicant's previous or current locations have been rented or borrowed and involve frequent moves; 2) the Property is large, virtually surrounded by similar religious uses, and otherwise well-buffered from the neighboring residential community; 3) the Property includes an off-street parking area that holds at least 13 vehicles, and the Applicant will never have more than eight (8) vehicles; 4) primary activities of the residents would include prayer and on-site study, 5) activities will not typically include daily commuting from and to the Property; and 6) based on points 1 – 5, the proposed use will not adversely affect the use of neighboring properties, and will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps

In addition to the Applicant's Statement, the Application included information on the BZA history of the Property, which includes no evidence of any BZA imposed term limits. The current Certificate of Occupancy for Ronald McDonald House is based on a BZA special exception approval that did not include a term limit. The Applicant's representative, Sister Theotokas, offered testimony at the hearing that the proposed use will be less intensive than the current Ronald McDonald House use

Office of Planning. The Office of Planning ("OP") submitted a report on September 7, 2010, in which it recommended approval of the Application with one condition: that no more than ninety-six (96) residents are housed on the site. In its report, OP found that 1) the Applicant's proposed use would not adversely affect the use of neighboring property because surrounding properties had religious uses similar to this proposed use, and also because the single-family residences to the northwest and north of the site are buffered by extensive vegetation which minimizes the view and sound from the Property; and 2) the amount and arrangement of parking spaces would

be adequate, since at full capacity only 8 vehicles would be needed, 13 are provided, and WMATA bus stops are nearby.

ANC 5A. On September 9, 2010, Advisory Neighborhood Commission (“ANC”) 5A filed a duly authorized resolution in support of the Application. In this resolution, the ANC noted that it was satisfied that there would be no substantial increase in vehicular traffic related to the requested increase in occupancy as the transportation for the members of the religious community would be provided by 8 vans, and the members of the religious community would not have personal cars. The ANC also stated its wish that the Property be limited to religious residence use.

The Hearing At the hearing, the Board noted that the Applicant had satisfied the requirements of Section 215 and that testimony at the hearing had resolved any remaining questions that the Board may have had. The Office of Planning noted that a question it had regarding possible events at the Property had been resolved to OP’s satisfaction prior to issuance of its Report.

II. Argument

A. Jurisdiction of the Board. Pursuant to Section 3104.1 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to affect adversely the use of neighboring property, subject also, in this case, to the specific requirements for relief under Section 215 of the Zoning Regulations.

Uses that are permitted by special exception are deemed compatible with other uses permitted in that particular zoning classification provided certain requirements are met. In

reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See *Nat'l Cathedral Neighborhood Ass'n. v D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000); *French v District of Columbia Bd. of Zoning Adjustment*, (658 A.2d 1023, 1032-33) (D.C. 1995).

Although the Board may impose reasonable conditions when granting zoning relief, the conditions imposed must relate directly to the zoning relief being requested, and must relate to specific findings, which in turn must be based upon "reliable, probative, and substantial evidence in the record as a whole." See *National Black Child Development Institute v District of Columbia Board of Zoning Adjustment*, 483 A.2d 687, 692 (D.C. 1984).

B. No Evidence In Support of a Term Limit Condition.

All testimony and other evidence on the record shows conclusively that the Application has safely met the requirements under Sections 3104 and 215. The Office of Planning issued a report recommending approval with no concerns or suggested conditions other than to limit the number of residents to ninety-six (96). ANC 5A passed a resolution in support while noting its preference for religious residence use. At the hearing, Sister Theotokas affirmed that the principal use would involve prayer and on-site study, and that the proposed use would be similar or less intensive than the current use. The Board stated that the Applicant had satisfied the requirements of Section 215. There was no opposition or even a statement of concern in the record from any person or group. Nowhere in the record is there any mention of a term limit, any evidence of any need for a term limit, or any mention of potential adverse impacts that

would suggest the need for a term limit. If there had been such discussion, the Applicant would have offered testimony in response

In a similar case, BZA Case No 16911, applicant Brandywine Street Association filed a Motion for Reconsideration to request the removal of a term limit condition on special exception approval for a child development center. In response to that motion, the Board increased the term from 3 to 10 years, but did not remove the condition entirely, ruling that the record showed the “potential for unforeseen adverse impacts” from the child development center use. The Brandywine decision is easily distinguished from the present case, since there is nothing in *this* record or in local lore – in contrast to child development centers - to suggest that a religious order of nuns involved in prayer and study hold the “potential for unforeseen adverse impacts.”

C. Five-Year Term Limit Would Be a Burden on the Applicant

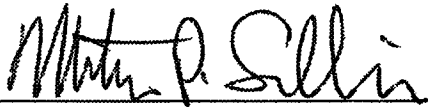
The Applicant expressed on the record that stability was a crucial concern for the Applicant. Because the Board did not identify a reason for the imposition of the five-year term, the Applicant is not clear on what basis the Board imposed such a condition. Therefore, if the Board desires additional information on the potential negative impact on the Applicant of the five-year term, the Applicant is willing to provide additional testimony and documentation of the Applicant’s 10-year search for suitable property in D.C., and other potential concerns of lenders and grant-providers about the long-term viability of the Order at this location.¹

¹ The Applicant notes that these concerns about its stability and viability are not central to the Board’s deliberation of this Motion, since the term limit condition is more appropriately removed under the rationale that the Application has met the special exception requirements under the Zoning Regulations, without any evidence that would justify the imposition of a term limit.

III.
Conclusion

There is no evidence of record to support the imposition of a 5-year term limit on the Special Exception, and as discussed herein, conditions imposed by the Board must relate to specific findings, which in turn must be based upon "reliable, probative, and substantial evidence in the record as a whole " *National Black Child Development*, supra, at 692 Therefore, the Applicant respectfully requests that the Board modify BZA Order No 18095 by removing Condition No 1.

Respectfully Submitted,

 9/27/10

Martin P. Sullivan
Sullivan, Styles & Barros, LLP