

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of Van Ness South Tenant's Association

BZA Appeal No. 18151
Hearing Date: January 4, 2011
ANC 3F

**INTERVENOR,¹ SMITH PROPERTY HOLDINGS VAN NESS, L.P.'S
PRE-HEARING STATEMENT IN OPPOSITION TO APPEAL**

The Intervenor,¹ Smith Property Holdings Van Ness, L.P., by and through undersigned counsel, respectfully submits this Pre-Hearing Statement in Opposition to the Appeal of the Van Ness South Tenant's Association of the Department of Consumer and Regulatory Affairs ("DCRA") issuance of Building Permit No. B1009105 (August 13, 2011) authorizing "Adding 21 Walls To 21 Apartment Rooms" (the "Building Permit") at the Van Ness South Apartment Building at 3003 Van Street, N.W. (Square 2049, Lot 806) (the "Property").

In Opposition to the Appeal, Intervenor states:

1. The Board does not have jurisdiction over the alleged Building Permit and Building Code Defects;
2. No Conversion of Apartments to Dormitories Occurred; and
3. The Apartments comply with the Zoning Regulations.

I. STATEMENT OF FACTS

The Intervenor, Smith Property Holdings Van Ness, L.P., is the record owner of 3003 Van Ness Street, N.W. (Square 2049, Lot 806) (the "Property").² The Property is

¹ By letter dated and filed December 20, 2010, Smith Property Holdings Van Ness, L.P. requested to Intervene in this Appeal pursuant to 11 DCMR § 3112.15.

improved with an eleven-story apartment building with 625 rental apartment units. The Property is zoned R-5-D.³ The Property is operated under Certificate of Occupancy No. B175541 (August 29, 1996) for “Rental Apartment House 625” issued by DCRA in the Intervenor’s name. Exhibit A. The Intervenor is also properly licensed as “Housing: Residential Apartment” under Basic Business License No. 54181xxxx-54002038 (Expiration: 10/31/2011). Exhibit B.

In August 2010, Intervenor leased twenty-one (21) apartment units to the University of the District of Columbia (“UDC”). The apartment units are not contiguous, but located throughout the building and on different floors. Each one bedroom and one bath apartment unit was the subject of a separate one-year standard written lease between Intervenor and UDC. The apartment leases each run from August 15, 2010 through August 14, 2011.

In order to prepare the apartment units for occupancy by UDC students, the Building Permit was obtained to install partition walls within each unit to provide additional privacy for the tenants by creating an additional bedroom. Each apartment unit was not increased or decreased in size and the common facilities, including kitchen and bathroom, and configuration and use as a single housekeeping unit were not altered in any way.

² Although not relevant to this Appeal, the Office of Tax and Revenue database incorrectly lists the owner of the Property as “Smith Property Holdings 4411 Connecticut LLC.” DCRA’s computer when generating the Permit incorrectly relied on the OTR database for ownership, but correctly identified the Property.

³ Although not relevant to this Appeal, a “dormitory” is first permitted as a matter-of-right in the R-4 zone, 11 DCMR § 330.5(g), and all higher Residential zones, including R-5-D. 11 DCMR § 350.4(a).

II. ARGUMENT

A. The Board Does Not Have Jurisdiction Over Alleged Building Permit and Building Code Defects

The Appellant has alleged numerous defects in the Building Permit itself and violations of the Building Code (12 DCMR). These allegations are irrelevant and incorrect, but more importantly outside the scope of the Board's jurisdiction. The Board's jurisdiction is strictly limited to the Zoning Regulations (11 DCMR). The Zoning Act and the Board's Rules clearly limit the Board's jurisdiction.

The Board, pursuant to the Zoning Act, shall also hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by any administrative officer or body, including the Mayor, in the administration or enforcement of the Zoning Regulations, Title 11 DCMR.

DCMR § 3100.2. (*Emphasis added*).

B. No Conversion of Apartments to Dormitories Occurred

The lease of the 21 apartments to UDC and occupancy by UDC students does not automatically convert the existing apartments to dormitories. In fact, who occupies an apartment is entirely irrelevant. The critical issue is how the apartment is configured and used by the occupants. "Apartment" and "Apartment House" are collectively defined as:

[O]ne (1) or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and under the control of the occupants of those rooms. . . providing accommodations on a monthly or longer basis.

11 DCMR § 199.1.

In this case, there has been no change in the apartment configuration and/or use of the apartment units. The several habitable rooms and kitchen and bathroom facilities are for the exclusive use and under control of the occupants of the unit. Based on the one year

leases, the accommodations are for more than one (1) month and are not transient. No conversion of rental housing to transient accommodations has occurred. Further, the tenants meet the definition of “family.”

[O]ne (1) or more persons related by blood, marriage, or adoption, or not more than six (6) persons who are not so related, including foster children, living together as a single house-keeping unit, using certain rooms and housekeeping facilities in common.

11 DCMR § 199.1. (*Emphasis added*).

In contrast, the configuration and use of the apartment units does not meet the common and accepted definition of “dormitory.” The Zoning Regulations do not define “dormitory”, but instead require reliance on the Webster’s Unabridged Dictionary, 11 DCMR § 199.2(g), which states:

A room intended primarily to be slept in; *esp*: a large room providing sleeping quarters for many persons and sometimes divided into cubicles.

Webster’s Third New International Dictionary (Unabridged) (2002).

C. The Apartments Comply with The Zoning Regulations

The twenty-one apartments with the partition walls comply in all respects with the applicable Zoning Regulations, including:

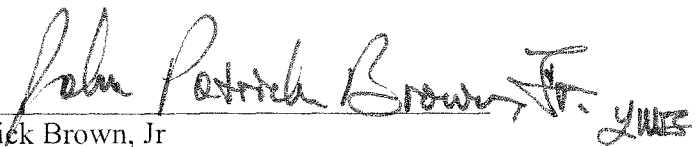
1. Valid Certificate of Occupancy for Apartment House;
2. Valid Basic Business License for Apartment Housing;
3. Habitable rooms with kitchen and bathroom facilities for exclusive use and control of occupants;
4. Rental Accommodations provided under one-year leases, not transient;
5. Fewer than six unrelated occupants living together as a single-housekeeping unit; and
6. No Conversion of Apartments to Dormitories.

III. CONCLUSION

Based on the foregoing, it is respectfully established that the Board does not have jurisdiction to hear or take any action with respect to the Building Permit and Building Code Issues and there is no violation of the Zoning Regulations established and the Appeal must be DISMISSED IN PART AND DENIED IN PART.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

A handwritten signature in black ink, reading "John Patrick Brown, Jr." with a stylized flourish at the end.

John Patrick Brown, Jr
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Washington, D.C. 20036
(202) 452-1400

*Counsel for Smith Property Holdings Van Ness, L.P.,
Intervenor*

EXHIBIT “A”

★ ★ ★
BLRA-17
(Rev. 12/95)

District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 — Washington, D.C. 20013-7200

No. B175541

CERTIFICATE OF OCCUPANCY

AUGUST 29, 1996
(date)

Permission is hereby granted to SMITH PROPERTY HOLDINGS VAN NESS L.P.
to use suite(s) _____ on the 1-11 FLOORS floor(s)
of the building located on lot(s) 8067 square 5049
known as premises 3003 VAN NESS STREET N.W. for the following
purpose(s) RENTALS APARTMENT HOUSE 625
NOT SEXUALLY ORIENTED [su]

BZA #: _____ EXPIRATION DATE: _____

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES
AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY
for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT
TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE
in the type of business, ownership of business, or part of premises used therefor, will
render this Certificate VOID and a NEW Certificate must be obtained.

ZONE R5D/C3A FEE \$1,014.63

Hampton Cross Director
By Allen S. [Signature]
Designee

EXHIBIT “B”

GOVERNMENT
OF THE
DISTRICT OF COLUMBIA
Adrian M. Fenty, Mayor

Department of Consumer and Regulatory Affairs
Business License Center- Room 1100
941 North Capitol Street, N.E.
Washington, D.C. 20002

Date Issued: 11/10/2009
Business ID/BBL#: 541B1XXX-54002038
Category: 301
License Period: 11/01/2009-10/31/2011

BASIC BUSINESS LICENSE

Applicant's Name and Mailing Address	Name and Licensed Premise Address	Registered Agent and Agent Address
ARCHSTONE-SMITH COMMUNITIES LLC 9200 E PANORAMA CIR. #400 ENGLEWOOD, CO 80112	3003 VAN NESS ST NW WASHINGTON, DC 20008	CORPORATION SERVICE COMPANY 1090 VERMONT AVE NW #430 WASHINGTON, DC 20005

Owner's Name:

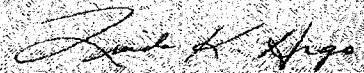
Corp. Name: SMITH PROPERTY HOLDINGS VAN NESS LP

Trade Name: ARCHSTONE VAN NESS

CofO# / HOP# : B143476	Square: 2049	Lot: 0806	Suffix:	Zone:	Ward: 3	ANC: 3F
Units: 625	Kitchens:	SQ FT:	Perm No.:	Tab First:	Tab Last:	VIN#

HOUSING: RESIDENTIAL
APARTMENT

THE LAW REQUIRES THIS LICENSE TO BE POSTED IN A CONSPICUOUS PLACE ON THE PREMISES



Linda K. Argo
Director

* License Effective from the later of Issued or Start of License Period Date

ADDENDUM

It is a violation of the DC regulation 73-22 Human Rights Law to discriminate for any reason other than individual merit, including but not limited to discrimination by reason of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, physical handicap, source of income, and place of residence or business. Failure to comply with the above shall be a proper basis for the revocation or suspension of this license.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Intervenor, Smith Property Holdings Van Ness, L.P. Pre-Hearing Statement in Opposition to Appeal was served by electronic mail and by first-class mail, this 28th day of December, 2010, upon the following:

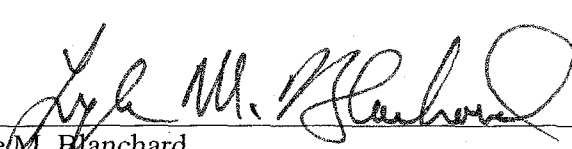
Mr. Matthew LeGrant
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
1100 4th Street, S.W.
Washington, D.C. 20024

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Chairperson
Advisory Neighborhood Commission 3F
4401-A Connecticut Ave, NW Box 244
Washington, DC 20008-2322

Ms. Karen Perry, ANC 3F02
3003 Van Ness St., NW
Washington, DC 20008



Lyle M. Blanchard