DC Board of Zoning Adjustment, c/o DC Office of Zoning
441 4th Street NW, Suite 200-S, Washington, DC 20001

MOTION FOR RECONSIDERATION OF BZA DECISION NO. 18506

Pursuant to DC Municipal Regulations, 11-3029.5, 3001.2, and 3001.4, Adams Morgan for Reasonable Development ("AMFRD") submits this timely Motion for Reconsideration of DC Board of Zoning Adjustment ("BZA") Final Order No. 18506 ("Order") dated September 27, 2013.

Ontario Residential LLC ("applicant"), formerly 1700 Columbia Road LLC, filed an application with the BZA for variance and special exception relief on November 26, 2012.

A zoning hearing was held on February 26, 2013, when the BZA granted AMFRD party status because of issues raised by AMFRD participants – those neighbors living in close proximity concerned about impacts on them by and through the zoning relief requested by the applicant

At the zoning hearing, AMFRD highlighted that there was no evidence on the agency record to support the relief being requested, and that rear-yard zoning relief was also required for the proposed six-story mixed-use condominium/retail project.

AMFRD's Motion for Reconsideration asks the BZA to reconsider the decision in this case:

I) to stand up for the integrity of the written zoning code for the sake of fairness for all applicants and parties now and into the future, and

II) to protect surrounding properties from negative impacts created by the zoning relief requested.

This motion will demonstrate the merits of reconsideration of the BZA's approval of the requested zoning by showing errors in the Order and the lack of evidence on the agency record.

(I) The BZA Order challenges the integrity of the zoning code and black letter of the zoning definitions; The BZA abrogates its authority in not requiring rear-yard relief review as needed in this case.

BZA Order No. 18506 states that, "[S]ince the applicant is not seeking ... [relief from the rear-yard requirements], Section 774.4 is not applicable in this case" (Order, page 11, fourth paragraph).

In this case, the applicant has it wrong about the rear-yard and the BZA cannot automatically defer to the applicant's beliefs of what zoning relief should be sought in any given zoning case, especially when the applicant mistakes the literal reading of the zoning regulations and definitions. At stake is the integrity of the DC Zoning Regulations and definitions.

The regulations are quite clear regarding the definition of a rear yard, ***with emphasis:***

DCMR 11-199 DEFINITIONS

199.1 When used in this title, the following terms and phrases shall have the meanings ascribed:

Yard, rear - a yard between the rear line of a building or other structure and the rear lot line, except as provided elsewhere in this title. ***The rear yard shall be for the full width of the lot and shall be unoccupied, except as specifically authorized in this title.***

In this case, the proposed rear yard will be occupied by at least two structures – a garage with its access/egress ramp permanently attached to the proposed condominium/retail building,[1] as well as a structure supporting a venting mechanism which will send noxious fumes from the

1 DCMR 11-199.1 When used in this title, the following terms and phrases shall have the meanings ascribed: *Garage*, parking - a building or other structure, or part of a building or structure, over nine hundred square feet (900 ft 2) in area, used for the parking of motor vehicles without repair or service facilities.

garage into the shared airspace of the surrounding buildings.[2]

In Point #14, on page 5 of the Order, under the Section entitled, "Office of Planning Report," the Mayor's agent for planning affirms AMFRD's concerns, "as the ramp would occupy almost the entire length of the property along the south side of the lot," referring to the location of the garage ramp in the rear-yard.

With a rear-yard occupied, and at points blocked by various structures, questions of safety and the use and enjoyment of the surrounding properties necessarily ensue but were not asked by the BZA. For example, how will emergency officials reach the back of the proposed site to rescue occupants on the top floors of the southern side of the building, or even those trapped in the surrounding buildings, and will it be in enough time to reasonably save people in the event of a fire, explosion, natural disaster, terrorist attack or any kind of emergency? [3] Also, what will be the level of noise and pollution impacts on the surrounding properties?

In this case, the structures described above will indeed prevent the proposed rear yard of the subject site from extend along the "full width of the lot" and the rear yard will not be "unoccupied" as defined by the zoning regulations. Thus, reconsideration is warranted so that the BZA can review the applicable rear-yard zoning relief and impacts therein.

(II) The BZA Order erroneously approves the roof-top zoning relief in excess of BZA authority and without required evidence, in breach of the governing zoning regulations.

In this zoning case, the applicant wants to build, "eleven stair structures that provide

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2 Exhibit 1: A letter dated February 24, 2012 that may not already be on the record, which was submitted by an affected neighbor and AMFRD participant, demonstrating the potentially serious pollution impact emanating from a structure that supports a vent from the garage and is located in the southwest corner of the rear yard.

3 DC Comprehensive Plan CDCR 10-A1112 (2012); 1112.5 ... Public safety has taken on new dimensions with the elevated threat of terrorism. ... The District also must be prepared to respond to natural disasters, such as hurricanes, floods, and other extreme weather events, and to hazardous material spills and other accidents.

direct access to the roof from private units, and one elevator override and mechanical penthouse" on the rooftop. Order, page 7, Point #22.

Instead of a singular stairwell and penthouse enclosure required by 11-DCMR 411.3, the BZA helps the applicant destroy the "reasonable degree of architectural control" by approving the construction of a great many different private roof-top stairwell structures leading to distinct private spaces on the roof without any evaluation of the physical and legal impacts of this relief.

Let's be clear, the applicant is not proposing an entirely private "matter-of-right" project. The applicant is asking for a public benefit in the form of relief from publicly governed zoning regulations. Certain rights, like those found in the Americans with Disabilities Act ("ADA") and the DC Human Rights Act, are conveyed when public benefits like zoning relief are granted for the construction of new housing developments in the District of Columbia.

If this project were to move forward without reconsideration, the applicant will not be able to offer any of the top-floor units to those who may want to live in this building with private access to a private space on the roof but who may otherwise be physically challenged by the roof-top stairwells as approved by BZA. This is patently unfair and not an exercise in a "reasonable degree of architectural control upon roof structures" as required by 11-DCMR 411.1

Thus the public relief being requested, and ultimately granted, assists the development wishes of the applicant but results in disparate treatment of people with disabilities. The final decision counteracts human rights regulations and laws and must be reconsidered.

For argument's sake, even supposing that the BZA did have the authority to grant zoning relief allowing a special situation where *only able-bodied* renters and/or owners could access the

distinct private roof decks, the regulations explicitly say the applicant had to prove they absolutely needed this zoning relief.

And, the burden of proof in this zoning matter was strictly on the applicant, not on AMFRD, during all of these zoning review proceedings per 11-DCMR 3119.2. To this end, the Order concludes that the zoning relief, which allows the many roof-top structures, pleases both the applicant and surrounding neighbors by, ".. contribut[ing] to the vibrancy of the building" Order, page 7, Point #26. "[T]he Applicant is providing multiple enclosures rather than a single enclosure in order to minimize the overall bulk of the roof structure, which, in turns minimizes their effect on neighboring properties." Order, page 10, first paragraph, third sentence. "Due to the location and treatment of the proposed penthouse structures, these structures will have minimal effect, if any, on the light and air of neighboring properties." Order, page 7, Point #27.

However, the zoning regulations do not allow the BZA to grant zoning relief only when the applicant shows their proposed roof-top structures will bring "vibrancy" to the project and to the surrounding neighbors. According to 11-411.11, the applicant had to show that constructing the required one (1) enclosed rooftop structure was, "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable." The applicant never attempts to address, in either evidence or testimony anywhere on the record, that constructing the roof-top structure in accordance with the law would be impracticable, unduly restrictive, prohibitively costly, or unreasonable. Instead, the BZA erroneously flips the onus of this burden away from the applicant and onto AMFRD and the public. This is a serious error deserving reconsideration as it clearly kept the BZA from

conducting a full evaluation of how the approved zoning relief will impact the project itself, and surrounding properties.

For example, AMFRD testified to the issue of fire safety regarding the proposal to open the roof on this building to nine times as many access points as allowed by the zoning regulations Each access point to the roof, in the context of traditional zoning metrics for fire safety, is a point of travel for expeditious fire spread and development. As far as the record shows, the DC Fire and Emergency Management Services did not review this proposal and give consent to break away from the requirements of 11-411.3, and thus the BZA does not understand what fire safety protocols, scenarios, and risks the occupants of this building may face by having many more than one access point to the roof, instead of a singular penthouse enclosure and stairwell as required by law.

Further, the Order attempts to show, in a most conclusory way, that the proposed roof-top structures won't impact the light and air to surrounding properties. This type of impact is specifically highlighted by 11-DCMR 411.1 which says that a special exception to the roof-top structure requirements can be granted by the BZA provided, among other issues, "that ... the light and air of adjacent buildings shall not be affected adversely."

None of the proponents of this zoning application – neither the applicant, the Office of Planning, nor the affected Advisory Neighborhood Commission – ever provided a light and air study for review by the public or the BZA, and a study cannot be found anywhere. Therefore, the decision by the BZA to grant the relief from the roof-top structures zoning requirements is not based on substantial evidence on the record.

CONCLUSION

The applicant has not met its burden of proof, as required by law, to be awarded the zoning relief as requested in BZA Case No. 18506.

Further, the BZA both over-stepped its authority in granting the rooftop structure relief, and under-stepped its authority in dismissing the required rear yard relief.

The final decision by the BZA was not made in accordance with fundamental zoning regulations and as enacted in DC Law, thus the decision severely assails the basic purposes of zoning review to promote the safety and welfare, as well as the equal use and enjoyment of the proposed building and neighbors surrounding properties. The Final Order in BZA Case No. 18506 must be reconsidered and re-argued.

Respectfully submitted to the Office of Zoning on this, the 9th day of October, 2013, and served to all other parties to this case (as shown below) by post mail also on this, the 9th day of October, 2013

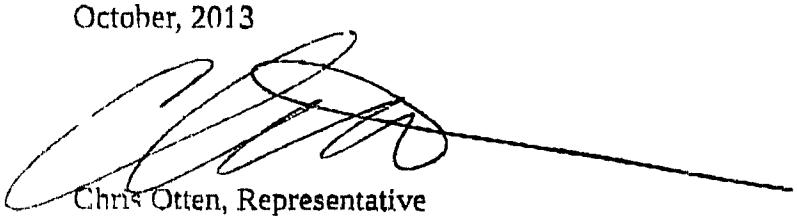

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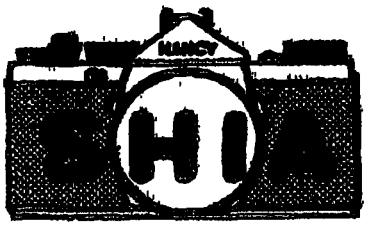
EXHIBIT 1

Conferences
Social Events



News Photography
Conventions
Sporting Events

FREELANCE PHOTOGRAPHER

1738 Columbia Road, N.W
Washington, D.C. 20009
(202) 234-0383

February 24, 2013

DC Zoning Commission
441 4th Street NW, Room 200 South
Washington, DC

RE: The Ontario Theater Development

Dear Zoning Commission,

I live in the 1700 block of Columbia Road, NW. I am writing about the plans of Ontario Theater Development that show the exhaust vent from the garage will be on ground level at the end of a dead end alley, and will be putting the poisonous fumes out into the back yards of my building and the surrounding buildings. If put there, the exhaust fumes will be spewing out less than twenty feet from some of the windows of the apartments in these buildings.

If the fumes are allowed to spew out at this level, this will create a very noxious and possibly lethal situation in the back yard of my building, where I have a vegetable garden and grow food during the summer months. The fumes will also be able to directly enter the apartments on the side of the building nearest the old theater. There is also a daycare center called Jubilee Jumpstart in the building next door to my building, and the children play outside in the back yard. If the exhaust from the garage is allowed to spew into my back yard, it will also spew in the yard of the daycare center.

Please have the developers of the project change the position of the garage exhaust vent so that it will create the least amount of harm possible to our community. Thank you.

Sincerely,

Nancy Shia

Nancy Shia
Fmr. ANC Commissioner in Adams Morgan

FAX TO:
DC OFFICE OF ZONING
FAX: 202-727-6072

FROM:
CHRIS OTTEN // ADAMS MORGAN FOR REASONABLE DEVELOPMENT
PHONE: 202-670-2366

RE: MOTION FOR RECONSIDERATION; BZA CASE NO. 18506

SEVEN (9) TOTAL PAGES, NOT INCLUDING THE COVER SHEET