

goulston&storrs
counsellors at law

Paul A. Tummonds, Jr.
ptummonds@goulstonstorrs.com
202-721-1157 Tel

Christine A. Roddy
croddy@goulstonstorrs.com
202-721-1116 Tel

October 16, 2013

ELECTRONIC DELIVERY

Lloyd Jordan, Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, NW, Suite 200 South
Washington, DC 20001

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO.

EXHIBIT NO.

18506
37

2013 OCT 16 PM 12:03

Re Case No. 18506 Applicant's Response in Opposition to AMFRD's Motion for Reconsideration

Dear Chairperson Jordan and Members of the Board

Ontario Residential LLC opposes the motion for reconsideration filed on October 9, 2013 by Adams Morgan for Reasonable Development ("AMFRD")¹. AMFRD fails to satisfy the relevant standards of a motion for reconsideration before the Board of Zoning Adjustment ("Board") as the motion does not provide any new evidence that wasn't already before the Board at the public hearing, as required by Section 3126.6 of the Zoning Regulations. Section 3126.6 states that "[n]o request for rehearing shall be considered by the Board unless new evidence is submitted that could not reasonably have been presented at the original hearing." AMFRD presents no new evidence in support of its motion for reconsideration. The motion puts forth two bases for the Board's reconsideration: the application's omission of rear yard relief and the extent of the roof structure relief requested. Both of these issues were addressed directly at the hearing.

AMFRD raised the erroneous view that rear yard relief was required in this application. The Chairperson of the Board noted at the outset of the hearing when AMFRD objected to the

¹ AMFRD erroneously refers to Sections 3029.5, 3001.2 and 3001.4 as the basis for their Motion for Reconsideration. Section 3029.5 outlines the process for filing a motion for reconsideration before the Zoning Commission. This response addresses the appropriate section of the Zoning Regulations, Section 3126, which enumerates the standards for a motion for reconsideration of a decision of the Board.

lack of rear yard relief, "If they don't have enough relief necessary for them to move forward, then that's the jeopardy that they have placed themselves in " (February 26, 2013 Transcript ("Transcript"), pp. 153-154) The Chair continued to note that the objection was "way out of bounds" (Transcript, p 157) The precise rear yard issue AMFRD raises in its motion for reconsideration was raised, and answered, at the very outset of the hearing. Nevertheless, that did not stop AMFRD from raising it again throughout the hearing. AMFRD raised it in its cross-examination of the Office of Planning (Transcript, p 220) and again during its direct presentation (Transcript, pp 228-229) This motion simply rehashes an issue that was settled at the hearing.

AMFRD also moves that reconsideration is necessary because of the extent of the roof structure relief that was requested. This request for relief was the precise basis for the public hearing and was thoroughly discussed at the public hearing, the record is replete with information regarding the roof structure relief. AMFRD's own motion for reconsideration acknowledges that this issue was addressed at the hearing (*see* page 6 regarding AMFRD's testimony at the hearing). Specifically, AMFRD cites access, light, air, and fire concerns with the approved rooftop structures. Not only are some of these issues outside of the purview of the Board, but each of these issues was noted in the record, considered and dispelled by the Board at the public hearing. *See* Transcript, pp. 225-234, and Exhibit 27.

Finally, AMFRD attached a letter to its motion for reconsideration from a neighboring property owner. The letter is dated February 24, 2013, two days *before* the public hearing took place. There is no explanation as to why this evidence could not have been presented at the public hearing. Again, the AMFRD does not provide a sound basis for the reconsideration of the Board's decision.

The record for this matter is complete and it fully supports the Board's decision. AMFRD has not offered any new evidence to the contrary. Accordingly, the Applicant asks that the Board dismiss this motion for reconsideration.

Sincerely,



Paul A. Tummonds, Jr



Christine A. Roddy

CERTIFICATE OF SERVICE

A copy of the foregoing letter and accompanying exhibits was sent to the following addresses by first class mail on October 16, 2013

Steve Mordfin
Office of Planning
1100 4th Street, SW
Suite E-650
Washington, DC 20011

ANC 1C
PO Box 21009, NW
Washington, DC 20009

William Simpson
ANC 1C06
1721 Euclid Street, NW
Washington, DC 20009

AMFRD
1830 Belmont Rd, NW
Washington, DC 20009


Christine A Reddy