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

APPLICATION OF ONTARIO
RESIDENTIAL LLC.
ANC 1C06

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) BZA Application Number: 18506
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REQUEST FOR AN IMMEDIATE HEARING

Adams Morgan for Reasonable Development, a party to Board of Zoning Adjustment ("BZA") Application Number 18506, hereby requests that the BZA schedule a hearing on BZA Application Number 18506 as required by the D.C. Court of Appeals' order of June 5, 2014 and the Board's own rules of practice and procedure. Court Order Attached as Exhibit A.

STATEMENT OF FACTS

1. On November 26, 2012, 1700 Columbia Road, LLC filed Board of Zoning Adjustment Application No. 18506 seeking special exceptions and variances in order to facilitate the construction of a proposed mixed-use residential building.
2. Subsequent to the application, Ontario Residential LLC took over the project from Columbia Road, LLC and continued to pursue the requests for special exceptions and variances.
3. On February 26, 2013, the BZA held a hearing and voted to grant all of Ontario's requested variances and special exceptions. D.C. Board of Zoning

Adjustment, *Decision and Order on Application No. 18506*, 1 (February 26, 2013) (“Order.”)

4. At the hearing, Adams Morgan for Reasonable Development (“AMRD”) was granted party status. Order at 2. The Board issued the Order on September 27, 2013.
5. On October 9, 2013, Appellant filed a Motion for Reconsideration, which was denied by the Board via oral order on October 29, 2013.
6. On November 29, 2013, AMRD filed a timely petition for review in the D.C. Court of Appeals seeking review of the Order. Exhibit B.
7. AMRD filed a Motion for Summary Disposition with regards to the special exceptions for roof structures. Exhibit C.
8. AMRD in no way gave up its challenges to the other special exceptions and variances.
9. On June 5, 2014, the D.C. Court of Appeals granted AMRD’s motion, vacated part of the Order and remanded the case to the BZA for “further proceedings consistent with this judgment.”
10. No further proceedings have been held.
11. On July 25, 2014, Ontario filed a letter with the Board “retracting its request for special exception relief for the number of rooftop structures and the uniform height of the structures.” Exhibit D.
12. That letter was not served on AMRD and AMRD has neither seen the letter or the modified plans that went with it.

ARGUMENT

The Board previously approved Ontario's plans. Ontario's letter was a request to modify the plans the BZA had approved. Exhibit D ("The Applicant has since revised its roof plan.") DCMR 11-3129, governs an Applicant's requests to modify an approved plan. Under DCMR 11-3129, there are two different types of modifications, minor and non-minor. Under either provision, Ontario and the Board have not followed the required procedure to approve a modification.

I. ONTARIO'S LETTER WAS A REQUEST TO MODIFY AN ORDER OF THE BOARD AND REQUIRES A HEARING

DCMR 3129.6 defined what modifications are minor. It states that "[a]pproval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts upon which the Board based its original approval of the application." Ontario's letter changes the material facts because it claims that its rooftop structures are now "compliant with the Zoning Regulations." Under DCMR 3129.7, "[a] request to modify other aspects of a Board order may be made at anytime, but shall require a hearing." Ontario is requesting that the Board simply eliminate a large part of its Order, while leaving other portions intact. The BZA's own rules of procedure clearly require a hearing.

II. IF THE MODIFICATIONS ARE MINOR, ONTARIO HAS STILL FAILED TO FOLLOW THE BZA RULES OF PROCEDURE AND PRACTICE FOR MODIFYING AN APPROVED PLAN

DCMR 11-3129.4 requires that "[a]ll requests for minor modifications of plans shall be served on all other parties to the original application at the same

time as the request is filed with the Board. A party shall have ten (10) days within which to submit written comments that such party may have concerning the requested modification.”

a. Ontario failed to serve AMRD

AMRD was a party to the original application and was not served with, or aware of, this letter. AMRD has suffered extreme prejudice in that Ontario’s ex parte communication has deprived AMRD of its statutory right to appeal the BZA’s decision, not only on this modification, but with regards to the other variances and special exceptions previously granted. Ontario’s letter states that it served AMRD representative Chris Otten, but Mr. Otten did not receive the letter. See Attached Affidavit.

b. Ontario failed to include modified plans with its letter.

DCMR 31292 requires that requests for minor modifications include “the plans for which approval is now requested.” The letter from Ontario does not include the modified plans it references.

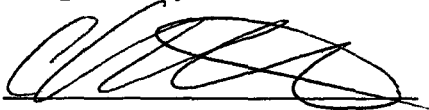
III. THE BZA WAS REQUIRED TO HOLD “PROCEEDINGS” PRIOR TO ALLOWING ONTARIO TO MOVE FORWARD UNDER THE ORDER

The plain language of the Court of Appeals ruling is completely clear. The case “remanded for further proceedings consistent with this judgment.” If the BZA wished to accept Ontario’s modified application, it was required to hold a proceeding to do so and none has been held. A proceeding in this case is equally important because a proceeding, even one that simply withdrew the

special exceptions invalidated by the Court of Appeals and left the rest of the Order intact, would allow AMRD to continue pursuing its appellate rights, which the current ex parte action has taken away.

WHEREFORE, Adams Morgan for Reasonable Development hereby requests that the Board schedule a hearing on Application 18506 to determine which portions of the Order are still valid.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Chris Otten', written over a horizontal line.

Chris Otten
Representative
Adams Morgan for Reasonable Development
1830 Belmont Rd. NW,
Washington, D.C. 20009

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AFFIDAVIT

My name is Chris Otten and I am the President of Adams Morgan for Reasonable Development ("AMFRD"). In that capacity I have appeared before the Board of Zoning Adjustments in the above-captioned application case.

I never received a copy of Ontario Residential LLC.'s July 25, 2014 letter to the Board. I saw that letter for the first time in September of 2014.

I solemnly declare and affirm under the penalties of perjury that the contents of the preceding affidavit are true and based on my personal knowledge.



Chris Otten
Representative/Coordinator
Adams Morgan for Reasonable Development

9/16/14
Date

Sean Canavan