

November 10, 2014

ELECTRONIC DELIVERY

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

Re: Case No. 18506 – Response to Request for Immediate Hearing

Dear Chairperson Jordan:

Adams Morgan for Reasonable Development (“AMFRD”) filed a request for an immediate hearing in Case No. 18506 on October 1, 2014. On behalf of the Applicant, Ontario Residential LLC (“Ontario”), we submit that further proceedings are neither necessary nor required. AMFRD argues additional review of the roof structures is required; however, Ontario withdrew its request for roof structure relief. Ontario is constructing a roof plan that is fully compliant with the Zoning Regulations; thus, there are no pending matters before the Board for review.

I. Background

At the center of this request is a mixed-use project located in Adams Morgan at 1700 Columbia Road, NW. An application was filed with the Board on November 26, 2012, requesting relief from the parking requirements, loading requirements and roof structure requirements. Specifically, the application sought relief from the roof structure requirements on three bases: (1) roof structure setback, (2) uniform height of the roof structures and (3) provision of more than one roof structure. The Board conducted a public hearing on this matter on February 26, 2013, at which time AMFRD was granted party status in opposition to the application. The Board voted unanimously to approve the application at the close of the hearing. The final BZA Order was issued in September 2013 and AMFRD filed a motion for reconsideration. The Board denied AMFRD’s motion (Order No. 18506A). Upon denial of the motion for reconsideration, AMFRD appealed the BZA order to the Court of Appeals.

Once before the Court of Appeals, AMFRD filed a motion for summary disposition arguing that BZA Order No. 18506 did not sufficiently support Ontario’s request for roof structure relief. AMFRD did not take issue with the relief granted from either the parking or

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loading requirements. The Court issued an order on June 5, 2014, a copy of which is attached as Exhibit A. The Court vacated two components of the roof structure relief: the number of structures and the varying height of the structures. The Court remanded those two requests for relief to the Board for further proceedings. The Court upheld the request for relief from the setback requirements.

At the same time that the Court proceedings were underway, Ontario had started construction on its project in accordance with the plans approved by the Board. Upon issuance of the Court's order, Ontario took a step back, reviewed its options, and decided that in light of the work that had already been undertaken, the most conservative and expeditious approach would be to proceed with a fully compliant roof structure. Such an approach would obviate the need for further proceedings and would seemingly satisfy AMFRD's complaints against the project. Accordingly, Ontario amended its building permit application to include a roof plan with a single structure of a uniform height. The roof plan was reviewed and deemed zoning-compliant by the Department of Consumer and Regulatory Affairs during the processing of the building permit application. As the attached notes demonstrate, the zoning reviewer was well aware of the Court order and took its effect into consideration when it approved the roof structure. See zoning reviewer comments on the roof plan attached as Exhibit B.

II. AMFRD's Basis for Additional Hearing is Erroneous

AMFRD bases its argument that additional proceedings are required on 11 DCMR Section 3129.6. Section 3129.6 deals with minor modifications of approved plans; however, AMFRD ignores the very first subsection of Section 3129. Section 3129.1 states that Section 3129 only applies to applications filed with the Board requesting relief. Because Ontario withdrew its request for roof structure relief, it no longer had an application for roof structure relief before the Board and thus no longer required proceedings. Section 3129.6 would apply if Ontario modified its roof plan but still needed roof structure relief. Section 3129.6 no longer applies if the request for relief is withdrawn, leaving nothing before the Board for review.

For the sake of AMFRD's argument, if further proceedings were scheduled, what precisely would the BZA be reviewing? The Court remanded the application for further proceedings to substantiate the Board's granting of approval. If Ontario is no longer requesting roof structure relief, there is nothing for the Board to review. AMFRD is essentially requesting a hearing on the compliance of the roof structure with the Zoning Regulations. Whether a zoning reviewer erred in determining that the approved roof plan is compliant with the Zoning Regulations is a wholly separate question. AMFRD has in fact filed a separate appeal of the building permit and a hearing has already been scheduled before the BZA for January 13, 2015, on that very issue. AMFRD is now requesting another hearing to address the very same issue.

III. Conclusion

It is apparent that AMFRD is making every effort to halt construction of 1700 Columbia Road: it opposed the initial BZA application, it filed a motion for reconsideration of the BZA

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Order, it appealed the BZA Order to the Court of Appeals, it appealed the issuance of the building permit to the Office of Administrative Hearings, it is requesting an immediate hearing on the redesigned roof structure and it has filed a separate appeal of the building permit to the BZA. Nonetheless, the approved project is well underway despite AMFRD's baseless claims. Ontario has proceeded in full compliance with the loading and parking relief granted in Order No. 18506 and with a roof structure that fully complies with Zoning Regulations. Further proceedings on the roof structure are not necessary and granting AMFRD's request would be duplicative of the hearing that has already been scheduled for January 13, 2015. Ontario asks that the Board deny AMFRD's request for immediate hearing.

Sincerely,



Paul Tummonds



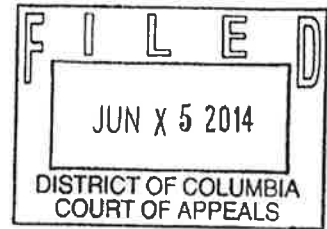
Christine Roddy

Encl.

cc: Alan Bergstein, Office of the Attorney General
Clifford Moy, Office of Zoning
Adams Morgan for Reasonable Development, c/o Chris Otten

Exhibit A

**District of Columbia
Court of Appeals**



No. 13-AA-1356

ADAMS MORGAN FOR REASONABLE DEVELOPMENT,
Petitioner,

BZA 18506

v.

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT,
Respondent,

and

ONTARIO RESIDENTIAL, LLC,
Intervenor.

BEFORE: Glickman and Easterly, Associate Judges, and Nebeker, Senior Judge.

J U D G M E N T

On consideration of petitioner's motion for summary reversal or remand titled as a motion for summary disposition and the opposition thereto, petitioner's reply, the petition for review, and the record on appeal, and it further appearing that petitioner's motion only challenges the grant of the special exceptions granted for the roof structures, it is

ORDERED that the motion for summary reversal is granted to the extent that the Board of Zoning Adjustment failed to make any specific findings as to impracticability prior to granting the special exceptions to 11 DCMR § 411.3 and .5 permitting multiple roof enclosures at two separate heights. *See Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). Under 11 DCMR § 411.11, the Board of Zoning Adjustment was required to find that compliance with the single enclosure and height requirements under 11 DCMR §§ 411.3 and .5 is impracticable before granting special exceptions. Accordingly, we remand this case for further findings on these issues. *See generally Nat'l Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984, 986 n.2 (D.C. 2000) (explaining that this court "must uphold

No. 13-AA-1356

decision made by the Board *if* they rationally flow from findings of fact supported by substantial evidence in the record as a whole”) (emphasis added). However, the Board of Zoning Adjustment was not required to find the proposed set-back, *see* 11 DCMR § 411.2 (§ 770.6), impracticable before granting a special exception. *See* 11 DCMR § 411.11 (requiring a finding of impracticability only for §§ 411.3-.6 before empowering the Board of Zoning Adjustment to grant a special exception). Because the Board of Zoning Adjustment properly considered the requirement of 11 DCMR § 3104, it need not make additional findings in this respect. It is

FURTHER ORDERED and ADJUDGED that the order on appeal is vacated in part and remanded for further proceedings consistent with this judgment.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court

Copies to:

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Deputy Solicitor General, D.C.

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Christine A. Roddy
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Exhibit B

Enter the Property Address to review Application Status:

St. No.*

St. Name*

St. Suffix*

Quad*

1700

columbia

Road

NW

Find

Application Status by Property Address:

Please see the table below for review statuses. The table is not shown if the reviews have not been identified. A blank Status date means that the initial review has not been completed.

ApplicationID	Date Filed	Full Address	Agent Name	Phone Number
FS1402779	8/12/2014	1700 COLUMBIA RD NW	ADVANCED FIRE PROT. SYS. LLC	443-557-0321
TN1400124	5/12/2014	1700 COLUMBIA RD NW		
AH1400430	4/23/2014	1700 COLUMBIA RD NW	CHRISTINE LONG	443-848-1333
TC1400016	4/22/2014	1700 COLUMBIA RD NW	ERIKA CARROLL	240-595-7306
AH1400336	3/18/2014	1700 COLUMBIA RD NW	CHRISTINE LONG	443-848-1333
B1309151	7/23/2013	1700 COLUMBIA RD NW	KIM MITCHELL CDKM CONSULTING	202-420-0091
Discipline	Review Status	Status Date	Review Comment	
Zoning Review	Zoning Review Approved	07/14/2014	approved six story 80 unit apartment [with 9 iz units all at 80% am] building with ground floor retail, and one level underground parking garage for 32 parking spaces and 40 bikes. approved as per bza#18506 [including variance from loading requirements], and the modified plans to address court of appeals remand of rooftop structure issue.	
Mechanical Review	Mechanical Review Approved	01/14/2014		
Electrical Review	Electrical Review Approved	01/02/2014		
Fire Review	Fire Review Approved	01/09/2014	issues addressed.	
Elevator Review	Elevator Review Approved	01/09/2014	ok.	
Structural Review	Structural Review Approved	07/24/2014	structurally approved, but hold for eisf, ddot & wasa. all comments of ben johnson addressed.	
DDOE Review	DDOE Review Approved	11/12/2013	plans approved at first st. ne.	
DDOT Review	DDOT Review Approved	07/24/2014	ddot permits issued	
WASA Review	WASA Review Approved	07/24/2014		
EISF Review	EISF Review Approved	07/24/2014		
Plumbing Review	Plumbing Review Approved	01/14/2014		
Issue Permit	Permit Issued	07/24/2014		
FD1300081	6/14/2013	1700 COLUMBIA RD NW	KIM MITCHELL CDKM CONSULTING, LLC	202-420-0091
Discipline	Review Status	Status Date	Review Comment	
Zoning Review	Zoning Review Approved	07/08/2013	(c-2-b) foundation to grade only.	
Structural Review	Structural Review Approved	01/08/2014		
DDOE Review	DDOE Review Approved	11/04/2013	plans approved at first st. ne	
DDOT Review	DDOT Review Approved	01/17/2014	pa83640	
Plumbing Review	Plumbing Review Approved	07/01/2013		
Issue Permit	Permit Issued	01/22/2014		
SH1300052	5/30/2013	1700 COLUMBIA RD NW	KIM MITCHELL CDKM CONSULTING LLC	202-420-0091
Discipline	Review Status	Status Date	Review Comment	
Zoning Review	Zoning Review Approved	06/10/2013	app for sheeting and shoring only.	
Structural Review	Structural Review Approved	01/08/2014		
DDOE Review	DDOE Review Approved	11/04/2013	plans approved at first st. ne.	
DDOT Review	DDOT Review Approved	01/17/2014	pa83640	
WASA Review	WASA Review Approved	01/22/2014		
Issue Permit	Permit Issued	01/22/2014		
F1300366	5/14/2013	1700 COLUMBIA RD NW	KIM MITCHELL CDKM CONSULTING, LLC	202-420-0091
Discipline	Review Status	Status Date	Review Comment	
Structural Review	Structural Review Approved	05/15/2013		
DDOT Review	DDOT Review Approved	05/14/2013	per;mm(tracking#10088333)	
Issue Permit	Permit Issued	05/15/2013		
D1300245	1/22/2013	1700 COLUMBIA RD NW	KIM MITCHELL CDKM CONSULTING LLC	202-420-0091
Discipline	Review Status	Status Date	Review Comment	
Issue Permit	Permit Issued	01/22/2013		
R1300023	12/12/2012	1700 COLUMBIA RD NW	CDKM CONSULTING KIM MITCHELL	
Discipline	Review Status	Status Date	Review Comment	
Application Review	Application Accepted	12/12/2012		
D1200938	8/9/2012	1700 COLUMBIA RD NW	KIM MITCHELL	
Discipline	Review Status	Status Date	Review Comment	
Structural Review	Structural Review Approved	08/10/2012		
HPRB Review	HPRB Review Approved	08/09/2012		
Issue Permit	Permit Issued	08/23/2012		
R1200136	6/28/2012	1700 COLUMBIA RD NW	KIM MITCHELL	202-973-0713
Discipline	Review Status	Status Date	Review Comment	
Application Review	Application Accepted	06/28/2012		
SB1200278	4/24/2012	1700 COLUMBIA RD NW	ECS MID-ATLANTIC, LLC	703-471-8400
Discipline	Review Status	Status Date	Review Comment	
Structural Review	Structural Review Approved	04/24/2012		

EXHIBIT

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