

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

**APPEAL OF 2101 CONNECTICUT AVENUE
COOPERATIVE APARTMENTS, INC. FROM A
DETERMINATION OF THE ZONING
ADMINISTRATOR PERTAINING TO A PROPOSED
REAR ADDITION TO 2014 KALORAMA ROAD,
NW, WASHINGTON, DC 20009
SQUARE 2537, LOT 0301 (R-5-B)**

Appeal No. 18539

AND REQUEST FOR STAY

**PRE-HEARING STATEMENT OF 2101 CONNECTICUT AVENUE
COOPERATIVE APARTMENTS, INC.**

A. INTRODUCTION

On February 4, 2013, 2101 Connecticut Avenue Cooperative Apartments, Inc. (the “Cooperative”), the owner of Square 2537, Lot 0300 with the street address of 2101 Connecticut Avenue N.W. (the “2101 Residence”), by and through its duly authorized counsel, Linowes and Blocher LLP, filed Appeal No. 18539 (the “Appeal”) pursuant to Section 6-641.07(f) of the D.C. Code Annotated (“D.C. Code Annotated”) and Sections 3100.2, 3112.2, and 3112.5 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”) (the “Zoning Regulations”) from a determination of the Zoning Administrator rendered on December 5, 2012 (provided to counsel for the Cooperative on December 7, 2012) (the “Determination,” attached hereto as Exhibit “A”). The Determination concluded that the proposed rear addition to 2014 Kalorama Road (the “Property”) and conversion of an existing single-family dwelling to a nine-unit apartment building (the “Project”) could be constructed by “matter of right.”

In this Pre-Hearing Statement, the Cooperative incorporates the facts and exhibits set forth in its Appeal Justification Statement filed on February 4 and asserts that the Determination was issued in error for the following reasons:

1. The Project must provide at least four, appropriately-sized parking spaces because it is a conversion of a single-family dwelling to a nine-unit apartment building pursuant to 11 DCMR §§2120.3 and 2120.5;

2. The Project must provide at least a 5-foot side yard along the length of the building pursuant to 11 DCMR § 405.8;
3. The Project must comply with the Zoning Regulation's Inclusionary Zoning requirements pursuant to 11 DCMR § 2602.1 because the total project will add more than 10 multi-family units;
4. The Determination must be based on accurate and complete information, which was lacking in the submittal, in order to demonstrate that the Project complies with the Zoning Regulation's requirements for lot occupancy, floor area ratio ("FAR") and height requirements; and
5. The Determination cannot approve a Project that will violate the District's Noise Control Regulations, Trash Regulations and the federal Fair Housing Act.

The Determination will be the basis for the Department of Consumer and Regulatory Affairs ("DCRA") to approve the building permits necessary to construct a substantial, 60-foot rear addition to the historic house located at 2014 Kalorama Road (the "Property") directly on the shared property line with the 2101 Residence. The Determination specifically states, "Accordingly, when [the Developer] files the plans for a building permit, [the Zoning Administrator] will approve drawings that are consistent with the plans attached to this letter."¹ If this Appeal is not granted, DCRA will be permitted to approve permits that violate the Zoning Regulations and other District and federal laws/regulations. Further, if approved, the Project will permanently and irrevocably damage the Cooperative's members' enjoyment of their property

¹ The Determination identifies a Plan Set (the "Plan Set") as one of the attachments, but no Plan Set was attached to the Determination or provided to the Cooperative for review. A graphic Zoning Analysis was attached which was labeled as 2012 Kalorama Road (the "Zoning Analysis"). Accordingly, it is impossible for the Cooperative or this Board to know what Plan Set the Zoning Administrator reviewed or what "plans" the Zoning Administrator would find to be "consistent" and, therefore, approvable. Based on this material omission, the Board should reject or at least highly scrutinize any of the Zoning Administrator's Determinations that were based on a review of the Plan Set. That said, as discussed below, the Cooperative presumes that the Plan Set reviewed by the Zoning Administrator was, most likely, similar (if not identical) to plans provided to the Historic Preservation Review Board ("HPRB") in September and October 2012 ("HPRB 2014 Plans," attached hereto as Exhibit "B"). Copies of those plans are attached to this pre-hearing statement. As discussed below, the Cooperative asserts that the project design shown in the HPRB 2014 Plans violates the District's Zoning Regulations in several regards, as well as Noise, Trash and the federal Fair Housing Act. Accordingly, the Zoning Administrator's determination that he could "approve drawings that are consistent with the plans attached to this letter" is flawed and should be reversed by the Board.

and their property values, exacerbate the neighborhood's existing insufficient on-street parking supply, deny not only the 2101 Residence but also future residents of the Property adequate light and air, require significant design changes to accommodate Fair Housing Act requirements, and create unsightly conditions in the alley based upon insufficient trash removal and maneuvering space for vehicles. Accordingly, the Cooperative's Appeal should be granted, and the Board should direct the Zoning Administrator to revise the Determination such that the proposed Project will comply with the Zoning Regulations and other relevant laws.

B. THE DETERMINATION

The Determination was issued on December 5, 2012, two months after the Developer's architect conducted a "Preliminary Design Review Meeting" with the Zoning Administrator. The Determination letter establishes that on October 11, 2012, the Project's architect Ronald Schneck, Jr. of Square 134 Architects and the Zoning Administrator reviewed a "Zoning Analysis" and "Plan Set"² for the Project. Based on this review, the letter states that during the October 11 meeting, the Zoning Administrator and Mr. Schneck discussed the following nine "conclusions" that were memorialized in the Determination:

- 1 -The building is a matter-of-right conversion from a single-family dwelling to a nine unit apartment building in an R-5-B zone.
- 2- The building height shall be established by measuring from the top of the curb surface opposite of the the [sic] middle of the front of the building to the top of the roofing surface, or the top of the highest parapet, whichever distance is greater.
- 3- The lowest level of the building shall be determined to be a basement or a cellar based on the difference between the top of the adjacent grade and the surface of the ceiling at that level. If this dimension is less than [sic] 4', or the 2'-5" that is proposed, it will be deemed [sic] to be a cellar. In the case of a limited areaway to access the level, the top of the grade adjacent to the areaway shall be used.
- 4- The FAR calculation for the building exempts a cellar from the calculation; The cellar will not be counted towards the F.A.R. [sic] of the building.

² As stated above, the Determination does not include a copy of the "Plan Set".

5- The existing parking spaces of the building will be maintained and will be grand-fathered into the proposed building. The proposed project will maintain the existing three parking spaces at the rear of the building and off of the public alleyway and will provide these three parking spaces at their current locations and configuration. The dimensions of these spaces shall maintain the minimum dimensions in both directions.

6- The open courtyard which is surrounded by walls on three sides will extend from the lowest level up thru [sic] the roof and will be open to the sky. The courtyard is to be a minimum of 10'-0" in either direction and will be considered a legal open court.

7- The existing non-conforming side yard will be eliminated through the introduction of a conforming open court at the termination of the side yard.

8 -The areaway leading to the open court and the open court itself shall not be used in the calculation of lot coverage.

9- Inclusionary zoning shall not be required since the nuber [sic] of usnits [sic] is increasing from five to nine, a net increase of four units.

Based on these conclusions, the Zoning Administrator wrote, "Accordingly, when you file the plans for a building permit, I will approve drawings that are consistent with the plans attached to this letter."

C. ARGUMENT

The Zoning Regulations must be interpreted and applied such that their provisions

shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare to:

- (a) Provide adequate light and air;
- (b) Prevent undue concentration of population and the overcrowding of land; and
- (c) Provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.

11 DCMR § 101.1. As explained below, the Determination misinterprets and misapplies numerous provisions of the Zoning Regulations. Furthermore, failure to grant the Appeal would deny the residents of the Cooperative access to adequate light and air and allow the “concentration of population and the overcrowding of land,” in violation of the above provision.

1. Parking determination (Determination, Comment No. 5) was issued in error.

The Determination incorrectly concludes that the Project does not need to provide new parking spaces in addition to the three parking spaces that currently exist in the Property’s non-conforming garage. In so doing, the Project fails to provide the four parking spaces mandated for a “conversion from a single-family dwelling to a nine-unit apartment building” (Determination, Comment No. 1) pursuant to 11 DCMR § 2120.3, which states:

A historic resource and any additions thereto are exempt from the requirement of § 2100.4 to provide additional parking as a result of a change of use and from the requirement of § 2100.6 to provide additional parking as a result of an increase of intensity of use, *except* that parking shall be required for any addition where:

- (a) The gross floor area of the historic resource is being increased by 50% or more, and
- (b) The parking requirement attributable to the increase in gross floor area is at least four (4) spaces.

11 DCMR § 2120.3. There is no question that 11 DCMR § 2120.3 squarely applies in this instance because the Project (1) changes the use of the Property from an existing single-family dwelling into an apartment building; (2) increases the gross floor area by more than 50% (expanding the existing 2,166 square foot gross floor area to 6,070 square foot gross floor area); and (3) adds eight dwelling units to the Property. Accordingly, the Project must provide at least four parking spaces.³ Therefore, the Zoning Administrator’s determination that three parking spaces satisfy the Zone’s requirements is in error. Instead, the Project must either provide four parking spaces, reduce the number of units, or apply to this Board for a Special Exception to reduce the number of spaces provided pursuant to 11 DCMR § 2120.6.

³ In the R-5-B Zone District, “apartment house or multiple dwellings” are required to have “one [parking space] per two dwelling units.” See 11 DCMR § 2101.1.

However, even assuming *arguendo* that only three parking spaces are required, the Zoning Administrator's Determination that the three parking spaces that exist in the garage can be "maintained and grand-fathered" when the garage is planned to be completely removed is incorrect. Under the Zoning Regulations, non-conforming uses or structures can only be "grandfathered" if they continue to exist, are taken down by Act of God or are contributing resources to a Historic District. 11 DCMR § 2001.1-2004.6. The existing garage does not fall into any of these categories. Accordingly, if the Developer wants to retain the parking spaces in their "current locations and configurations," they must be maintained as they exist in the garage.

However, if the garage is removed as proposed, these three spaces lose their "grand-fathering" protection, and instead must comply with the Zoning Regulation's width and length requirements for parking spaces in historic districts established in 11 DCMR § 2120.5, which requires,

Parking spaces provided for a historic resource shall be a minimum of eight feet (8 ft.) in width and sixteen feet (16 ft.) in length exclusive of access drives, aisles, ramps, columns, and office and work areas. All required parking spaces shall be clearly striped and lined. Durable all-weather materials shall be used. Striping shall be maintained for as long as the parking spaces requiring the striping are in existence.

Once the garage is removed, the Zoning Analysis shows a rear parking lot with a width of only 20 feet and a length of 30 feet. In order to comply with 11 DCMR § 2120.5, three parking spaces must have a width of 24 feet. At the proposed 20-foot width, the three parking spaces are only 6.6 feet in width, well short of the 8-foot width required in 11 DCMR § 2120.5. Accordingly, because the parking spaces are no longer grandfathered after the garage is removed, the Project can only provide two legally-sized parking spaces within the available 20 feet. The proper size of any spaces provided must be 8 feet by 16 feet. For these reasons, the proposed parking does not meet the standards of the Zoning Regulations, and the Determination is in error.

Lastly, the access requirements of Sections 2117.7 and 2117.8 of the Zoning Regulations are similarly not met because the Zoning Analysis does not show "rear bumper guards, curbs, guard rails and/or screening between the property line and the perimeter of the parking area" as required, and the public alley is only 7.5 feet in width, which is less than the 12-foot width

required for one-way access or the 14-foot width required for two way access. See 11 DCMR §§ 2117.7 and 2117.8. Furthermore, as shown in the parking study produced by the Cooperative's expert architect, attached as Exhibit "C", ingress and egress out of the parking spaces will be impossible. Therefore, the Zoning Administrator's determination that the parking spaces can be provided "at their current locations and configuration" is incorrect.

2. Side yard determination (Determination Comment, No. 7) was issued in error.

The building on the Property was constructed in 1908 and has an existing, non-conforming side yard which is 5 feet in width and runs the length of the structure. In violation of 11 DCMR § 405.8, the Determination allows the Project to be built out to the property line. Accordingly, the Project does not extend the existing, non-conforming side yard along the length of the building. Instead, it locates the 60-foot brick wall directly on the Property line (within 8-feet of the 2101 Residence) thereby denying those residents adequate light, air and enjoyment of their homes.

This error is a clear violation of 11 DCMR § 405.8, which states:

In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).

This provision directly applies to the subject Project, which proposes a substantial addition to a building constructed prior to 1958 that has a 5-foot, non-conforming side yard. As a general matter, the terms "Extension" and "Addition" are not defined in the Zoning Regulations, but Webster's Dictionary defines "Extension" as "an enlargement in scope or operation", and an "Addition" as "a part added (as to a building or residential section)." Accordingly, this provision expressly applies to rear additions to historic properties, such as the one proposed here. Next, 11 DCMR § 405.8 was not intended to merely restrict the lateral expansion of a historic building into the existing, non-conforming side yard. The District clearly stated such an intent in Section 11 DCMR § 404.4, which applies to additions to historic properties into the rear yard and expressly states, "an extension or addition may be made to the building *into the required rear yard*." (Emphasis added). 11 DCMR § 405.8 does not include

similar restrictive language, and, therefore, such intent cannot be read into this provision. Accordingly, based on the clear language of 11 DCMR § 405.8, read together with the definition of “side yard” (a yard between any portion of a building or other structure and the adjacent side lot line, extending for the full depth of the building or structure (11 DCMR §199.1)), any addition to the existing structure must maintain the 5-foot width of the existing, non-conforming side yard along the length of the Project. The Project does not do so.

In addition to the plain language of this provision, this Board’s decision in *Appeal No. 17519 of Advisory Neighborhood Commission 2E*, issued on October 25, 2007 (Decision Date of November 14, 2006) is instructive on how 11 DCMR § 405.8 should be applied in the instant case. In *Appeal No. 17519*, the Board granted the ANC’s appeal of DCRA’s issuance of a building permit for an addition that eliminated a non-conforming side yard. In that case, the Board prohibited the elimination of the existing, approximately two-foot non-conforming side yard finding that “the existing width of the side yard is 2.5 feet and the addition would decrease its width to zero.” *Id.* p. 8. The Board expressly rejected arguments made by DCRA and the owner that the non-conforming side yard would be “eliminated... and therefore the provision would no longer apply.” (Emphasis in original). Instead, the Board found that “a decrease to zero is still a decrease within the meaning of the regulation [and] is more in accordance with the language of the regulation as well as the Zoning Commission’s intent as gleaned from its legislative history.” *Id.* p. 7. The Board then cites to the July 6, 1976 Memorandum of Ben W. Gilbert, then Director of the District’s Municipal Planning Office (the precursor to the Office of Planning), which was transmitted to the D.C. Zoning Commission in support of Zoning Commission case Z.C. 76-10 that amended the Zoning Regulations to adopt the text of 11 DCMR § 405.8 (then codified as § 3305.9). The Board cited to the relevant part of the Gilbert Memorandum as follows:

“The proposed amendment would allow an extension or addition to be made to the pre-1958 buildings in residential districts provided two conditions are satisfied as follows:

1. The width of the existing yard is not decreased.
2. The width of the existing side yard is at least five feet.”

Id., p. 8 citing to Gilbert Memorandum p. 3. Accordingly, because the Board found that the side yard width would be reduced to zero, the proposal violated the language and legislative

purpose of 11 DCMR § 405.8 and could not be permitted. Moreover, the Board was further persuaded to deny the building permit because of “evidence ... [showing] that a decrease in the side yard to zero would have adverse impacts on to the neighboring property...” *Id.*, at 8.

The Board’s decision in *Appeal No. 17519* establishes that the Zoning Administrator erred by approving the Project because it, like the proposal rejected in *Appeal No. 17519*, reduces the side yard to zero. Moreover, the decision in *Appeal No. 17519* directs the Board to reject the Zoning Administrator’s attempt to argue that the provisions of 11 DCMR § 405.8 will no longer apply because the “existing non-conforming side yard will be eliminated through the introduction of a conforming open court.” Rather, like the Board in *Appeal No. 17519*, this Board should conclude that the proposed reduction of the side yard to zero is “still a decrease within the meaning of the regulation...” and therefore violates this provision. Moreover, it is beyond dispute that eliminating the side yard would adversely impact the Cooperative’s residents. Many of those residences have long prized their eastward view. It provided those residents with access to light and air as well as privacy and tranquility. Replacing those surroundings with a 60-foot brick wall located within feet of their windows will deny these residents of sunlight and air, and will turn their now-tree-lined view into one more akin to looking at prison walls. Such action will undoubtedly impact the social and psychological well-being of these residents, and will also have a dire economic impact on the entire Cooperative, by drastically reducing the real estate values of almost all of the residences on the building’s east side.

Therefore, based on the plain language of 11 DCMR § 405.8 and the Board’s prior interpretation of that provision, this Board must find that the Zoning Administrator violated the Zoning Regulations by approving a Project that would not maintain the existing, non-conforming side yard.

3. Inclusionary Zoning determination (Determination, Comment No. 9) was issued in error.

The subject Property is immediately adjacent to another house on its eastern property line, known as 2012 Kalorama Road (“2012”). Both properties are in the R-5-B Zone, and the developer’s intention is to jointly develop the two lots with a total of 17 units (nine units on the Property and eight units on 2012). In fact, the Historic Preservation Review Board (“HPRB”)

application and materials, HPA No. 13-164, shows both properties as a single development unit. The joint development of the two properties results in more than ten new units thus it triggers the Inclusionary Zoning requirements of 11 DCMR §2602.1. Inclusionary Zoning, which requires construction of units for eligible, low and median income households, expressly applies to “developments” in the R-5-B district that “have ten (10) or more dwelling units (including off-site inclusionary units)” ...“for which a new addition will increase the gross floor area of the entire development by fifty percent (50%) or more.” See 11 DCMR § 2602.1(a-c). An applicant cannot avoid the application of the Inclusionary Zoning law by trying to deny the joint development of a project. Because the Project when combined with the neighboring 2012, increases the gross floor area by more than 50%, and the total development generates 17 total units, the Zoning Administrator erred when he determined that “Inclusionary Zoning shall not be required.” Instead, pursuant to 11 DCMR § 2603.3, the combined projects must provide approximately 2,284 square feet of Inclusionary Units, or approximately two, affordable units.

4. The Determination was not based on accurate or complete information

In addition to the specific zoning errors discussed above, the Determination lacks accurate and key information about the Project, which call into question all of the conclusions. A summary of these errors is discussed below:

a. Zoning Analysis is Incomplete

As stated above, the Determination includes by reference a “Zoning Analysis.” However, a review of the Zoning Analysis establishes that it includes mistakes and does not contain information necessary for the Zoning Administrator to make his determination regarding FAR, lot occupancy, height and court-width⁴ compliance. First, the Zoning Analysis is labeled “2012 Kalorama” and identifies the Property as being located at Square 2537, Lot 0150. The subject Property is located at 2014 Kalorama Road, and is recorded at Square 2537, Lot 301, therefore, this information is incorrect. This raises questions as to whether the additional information provided related to square footage, lot occupancy, height, etc. is inaccurate as well.

⁴ As stated above, the Cooperative asserts that the existing non-conforming side yard must be extended the length of the Property pursuant to 11 DCMR § 405.8. Accordingly, the Zoning Administrator could not have approved the Project with the proposed “open court” that “eliminates” the side yard. That said, even if a Court is allowed, there is no documentation to demonstrate that the width of the proposed court satisfies 11 DCMR § 406.1.

It is not certain that the Zoning Administrator reviewed a correct Zoning Analysis for 2014 Kalorama, and accordingly, any Determination made about the zoning for 2014 lacks support.

Second, the Zoning Analysis lacks crucial information necessary to show compliance with the Zoning Regulations or the Construction Code. Specifically, the Zoning Analysis does not comply with the requirements for a “Zoning Compliance Review Data” set forth in section 106.1.12 of the District’s 2008 Construction Codes codified at Title 12A-DCMR §§ 101A *et seq* (the “Construction Code”). Generally, this regulation requires applications for zoning compliance review include “plans drawn to a scale indicated numerically as well as depicted graphically, showing the orientation of the property as to true North” and showing “the shape and location in plan of all existing and proposed structures, fully dimensioned, including orientation and distances to lot lines so as to define without ambiguity the dimensions and location of said structures.” This information is necessary for the Zoning Administrator to determine the Project’s compliance with the Zoning Regulations. A review of the Zoning Analysis establishes that this document fails to meet all of these requirements. In particular, the Zoning Analysis lacks almost all dimensions, an identification of the front or rear portions of the property, notation of heights, a unit count or even an orientation to true North. Rather, the Zoning Analysis appears to be conceptual designs accompanied by unsupported conclusions that the Project satisfies the FAR, lot coverage and height requirements. Such a document does not allow for a determination of compliance with the Zoning Regulations.

b. No Plan Set Included with the Determination

As stated above, the Determination references a “Plan Set” as an attachment (in addition to the Zoning Analysis) and specifically states that “when [the Developer] file[s] the plans for a building permit, I will approve drawings that are consistent with the plans attached to this letter.” However, the Determination does not include a Plan Set. Therefore, the Cooperative and the Board will not have the opportunity to review the Plan Set that was the basis of the Determination, and it is impossible for the Board to confirm either what that Plan Set included or exactly what “plans” the Zoning Administrator would approve as being “consistent with the plans attached to this letter.” Moreover, neither the Board nor the Cooperative can confirm that the Plan Set complied with the Zoning Regulations.

5. The Determination cannot allow approval of a Project that will violate the

District's Noise Control Regulations, Trash Regulations and the Federal Fair Housing Act

The Determination permits a Project that will ultimately violate at least three other laws and regulations. The Cooperative asserts that the Project (1) cannot locate the HVAC systems in a manner that complies with the District's Noise Regulations; (2) cannot locate trash receptacles in accordance with the District's regulations; and, (3) the Project does not comply with the federal Fair Housing Act.

a. Noise

The Project will obviously require HVAC units. When looking at both the Property and the adjacent 2012, there will be a need for 17 HVAC units (nine for the Property and 8 for 2012). The clustering of these 17 units on the roofs of the two proposed projects will create noise levels well above that permitted by 20 DCMR §§ 2700.1 *etc.* (the "Noise Control Regulations"). Generally, HVAC units generate about 65 dB(A). Each unit that is added increases the dB(A) by about 1 dB(A). Thus 17 units will generate about 81 dB(A) of noise pollution at the source. Noise generally dissipates at about 1 dB(A) for each 10 feet of distance. Therefore, if the HVAC units are at maximum 25 feet from the 2101 Residence property line, the noise level will still be 78 dB(A), in both the daytime and nighttime. Of course, where they are only 3 feet from the property line between the Property and 2012, it will be closer to the original 81 dB(A).

DCRA is charged with administering the District's Noise Control Act of 1977. To that end, the Noise Control Regulations permit a maximum 60 dB(A) during the daytime and a maximum 55 dB(A) at nighttime in residential zones. Moreover, pursuant to Section 2701.2 of the Noise Control Regulations, the "sound level shall be measured at the property line of the property on which the noise source is located..." Consequently, it is clear that the noise levels must be compliant at both property lines for the Property. The Cooperative asks the Board to make a clear determination that such is the case because neither the Noise Control Regulations or the Noise Measuring Test Procedures set forth at 20 DCMR §§ 2900 *etc* exempt testing on shared property lines of semi-detached structures. Indeed, such an exemption would undercut DCRA's ability to test noise in row-house neighborhoods.

Because the design of the Project must accommodate all of these HVAC units in a manner that does not violate the Noise Regulations, it is not possible for the Zoning

Administrator to approve the Project unless and until these locations are identified. To allow the Project to proceed without such details being pinned down, will result in numerous extensive modifications at a later date or even worse, forced non-compliance by the developer because of size and design limitations that result in the ongoing and irreparable harm to the residents living in the 2101 Residence who will have to endure the noise violations after-the-fact. The Determination should not be valid unless and until this issue can be adequately addressed.

b. Trash

Based on the District's Solid Waste Regulations (21 DCMR § 700.8(a)), for development with more than four units, trash must be picked up by private trash services from alleys or loading docks. Therefore, trash from the Project's nine-unit apartment house cannot be left at the curb on Kalorama Road as it is currently done. Accordingly, the Project must locate trash receptacles in the rear of the Property so they can be accessed from the 7.5-foot public alley. These trash receptacles cannot be located in the public alley, so they must be somewhere on the already constrained Property in the already non-compliant parking area. Further, recycling will also be provided, and this will require additional receptacles be placed in the rear yard of the Property. The lining up of anywhere from 5 to 9 receptacles at the rear of the Property, and/or the location of a common dumpster facility, will encroach on the parking area and possibly require an adjustment to the size of the building.

In addition, if an enclosure is provided, it may be classified as a structure that would count as part of the Project's FAR. Without knowing these details, the Determination cannot assure that the proper trash receptacles will be provided and/or that the FAR will not be exceeded until it is too late, and thus again, the existing residents of the neighboring properties will be left to suffer the consequences. Furthermore, the alley at the rear of the Property is only 7.5 feet wide and has a sharp 90 degree turn that makes it virtually impossible for a trash truck to get to the Property. No trash trucks currently use the alley. The lack of maneuverability for the trash trucks is even more apparent if the trash receptacles are located behind the cars parked in the Project's proposed three parking spaces. Accordingly, the Cooperative anticipates that the location of the trash receptacles will not be accessible to trash trucks in violation of the District's regulations, and any attempt for trash trucks to access these receptacles will undoubtedly impede

vehicular and pedestrian circulation and safety in the alley. Accordingly, the Project cannot be constructed as designed, and the Determination is flawed.

c. Fair Housing Act Compliance

Neither the Zoning Analysis or the HPRB 2014 Plans propose a design that complies with the federal Fair Housing Act at 42 U.S.C.A. § 3600 *et seq* (the “FHA”) or the International Building Code (“IBC”) as adopted by the District. The proposed ground floor units are “covered multifamily dwelling” units because there are more than four dwelling units without an elevator. *See* 42 U.S.C.A § 3604(f)(7)(A-B). Accordingly, the Project design would violate the FHA if these units fail to be

“design[ed] and construct[ed]... in such a manner that--

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

42 U.S.C.A. § 3604(f)(3)(c)(i-iii). Further, the IBC §§ 1104, 1106 and 1107, collectively require that for Type B units, there must be an accessible entrance from the exterior of the building, any common spaces and accessible parking spaces must be on an accessible route, and at least one parking space shall be an accessible space. The Project does not propose such accessibility as presented to the Zoning Administrator. It is very likely, significant changes will be needed to make these accommodations and therefore, the Determination’s approval of the Project from a zoning perspective is not complete. For instance, the ground floor units are not

accessible to the “public use and common use portions” of the Property and there are no external walkways linking these units to the common entrance on Kalorama Road or the rear parking spaces. Moreover, there is no ramp to allow someone in a wheelchair to maneuver around the Property or to even move from Kalorama Road into the Project. Consequently, the Determination should be invalidated until such conformance can be proven.

D. COOPERATIVE’S CASE

The Cooperative anticipates it will need approximately 60 minutes to present its case. To support its position, the Cooperative will present testimony from the following experts:

- George Oberlander, AICP, Principal GO Consulting who will testify as an expert in planning and zoning and will discuss the Project’s lack of compliance with the Zoning Regulations and the Comprehensive Plan, (Resume attached as Exhibit “D”).
- Steven L. Spurlock, FAIA LEED AP, Principal WNUK SPURLOCK Architecture who will testify as an expert in Architecture and Site Design and will discuss the Project’s lack of compliance with the Zoning Regulations and the infeasibility of the Project in regards to parking, side yard, HVAC space, trash receptacle locations and compliance with the Federal Fair Housing Act, (Resume attached as Exhibit “E”)
- Mary McReynolds; a thirty-year resident of the 2101 Residence who will testify as a lay person on the harm that will be caused if the Appeal is denied.

The Cooperative will also submit the following exhibits in support of the Appeal:

- Determination Letter including Zoning Analysis and Survey (Exhibit A)
- Set of Plans presented to the HPRB dated October 25, 2012 (Exhibit B)
- Site Plans showing deficiencies in parking and trash (Exhibit C)

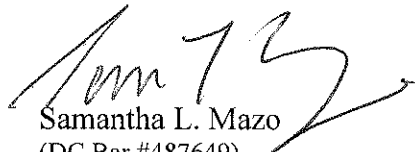
- Updated Survey of the Property dated December 2012
- Certificates of occupancy for 2014 Kalorama
- Resume of George Oberlander (Exhibit D)
- Resume of Steven Spurlock (Exhibit E)
- Interior Building Permit with Plans as approved by DCRA on December 5, 2012
- Photos showing existing 2014 Property and Garage

Respectfully submitted,

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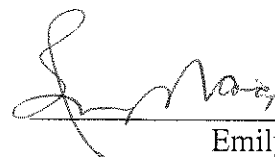
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