



BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA



FORM 141 - INTERVENOR REQUEST

Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated. All information must be completely filled out.

PLEASE NOTE: THIS FORM IS FOR APPEALS ONLY.
(Please see reverse side for more information about this distinction.)

Name: Lock 7 Development LLC
Address: 3204 Stephenson Place NW, Washington, DC 20015
Phone No.(s): 202-670-1360 E Mail:

I hereby request to appear and participate as an intervenor in Appeal No.: 18540

Signature: *Patricia M. Conroy* Date: 2/26/13

Will you appear as a(n) ☐ Proponent ☒ Opponent Will you appear through legal counsel? ☒ Yes ☐ No

If yes, please enter the name and address of such legal counsel.

Name: Cary Kadlecek
Address: Goulston & Storrs, 1999 K Street NW, Suite 500, Washington, DC 20006
Phone No.(s): 202-721-0011 E Mail: ckadlecek@goulstonstorrs.com

INTERVENOR CRITERIA:

On a separate piece of paper, please answer **all** of the following questions referencing why the above person should be granted intervenor status, pursuant to 11 DCMR § 3112.15:

1. What legal interest does the person (i.e., owner, tenant, trustee, or mortgagee) have in the property?
2. How will the property owned or occupied by such person, or in which such person has an interest, be affected if the Appeal before the Board is approved or denied?
3. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the Appeal before the Board is approved or denied.
4. What are the environmental, economic, or social impacts that are likely to affect the person and/or the person's property if the action requested of the Board is approved or denied?
5. What is the distance between the person's property and the property that is the subject of the Appeal before the Board? (Preferably no farther than 200 ft.)

February 26, 2013

VIA ELECTRONIC SUBMISSION

D.C. Board of Zoning Adjustment
441 4th Street NW, Suite 210S
Washington, DC 20001

Re: **BZA Appeal No. 18540 – Motion to Intervene; Denial of Request for Stay**

Dear Members of the Board:

Lock 7 Development LLC (“Lock 7”) hereby moves the Board of Zoning Adjustment (“BZA” or “Board”) to allow it to intervene in the above-referenced appeal (the “Appeal”) of a determination letter from the Zoning Administrator issued on December 5, 2012 (the “Determination”) regarding the construction of a rear addition to an existing residential building located at 2012 Kalorama Road NW. Lock 7 also requests that the Board deny the request to stay the processing and approval of all permits.

I. MOTION TO INTERVENE

Pursuant to Section 3112.15 of the Zoning Regulations (11 DCMR § 3112.15), Lock 7 requests that the Board permit Lock 7 to intervene in the Appeal. The Zoning Administrator provided to Lock 7 the Determination regarding the construction of a rear addition to an existing building to create an eight-unit apartment house. Lock 7 obtained the Determination as guidance that the proposed addition and use will comply with the Zoning Regulations. As the real party-in-interest with regard to the Determination and as the contract purchaser of the subject property,

Lock 7 has a specific interest in, and is directly and uniquely affected by, the outcome of the Appeal.¹

II. THE BOARD SHOULD DENY THE REQUEST FOR A STAY

Lock 7 urges the Board to deny the Appellants' request for a stay of processing and approval of all permits related to the planned addition. The Board does not have the authority to issue such a stay, and the issue is not ripe for consideration.²

First, the Board's appellate review power is limited to only those matters relating to the administration and enforcement of the Zoning Regulations. D.C. Code § 6-641.07(g)(1); 11 DCMR § 3100.2. The Zoning Regulations do not govern raze, demolition, sheeting and shoring, and many other permits related to construction. In addition, the Zoning Regulations do not govern matters concerning historic preservation, trash removal, the location of HVAC, or ownership of the land, so the Appellants' assertions regarding such matters are not relevant to this appeal. Therefore, the Board has no authority to stay the processing and approval of any permits, such as demolition permits, that do not implicate the Zoning Regulations.

Second, the Board has not taken any action on this matter, and a building permit for the project does not exist. While Lock 7 applied for a building permit on January 14, 2013, it cannot be issued pending final approval by the Historic Preservation Review Board.³ As a matter of law, the issue is not justiciable because it is not ripe for consideration, which would be the case

¹ The owner of the subject property will be 2012 Kalorama Road LLC.

² The Appellants misconstrue the meaning of *Kufлом v. D.C. Bureau of Motor Vehicle Services*, 543 A.2d 340 (D.C. 1988). That case concerned a stay considered by the BMVS for infraction and license suspension actions pending or already taken by that agency. That case reiterated the standards that an agency must apply when determining whether to stay an action of that agency. However, that case does not state that an agency has broad stay powers when it has not even acted; thus, it is not applicable in this case because the BZA has not taken any action.

³ The HPRB will consider this project for final approval at its March 28, 2013 public meeting.

only if the Board had taken action through an order or if a building permit existed. *Local 36 Int'l Ass'n of Firefighters v. Rubin*, 999 A.2d 891, 895-97 (D.C. 2010). Therefore, the Board cannot issue a stay for a BZA order that does not exist or building permit that does not exist.

Finally, the Board's power to stay is limited to its own actions and orders, and it does not normally extend to the actions of other agencies. *See generally George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921 (D.C. 2003). Therefore, its power to stay does not extend to the Department of Consumer and Regulatory Affairs and the processing and approval of building permits or to projects that do not require BZA approval.

III. CONCLUSION

The Board should grant intervenor status to Lock 7 because it is the real party in interest in the Determination and will be directly and uniquely affected by the outcome of the Appeal. Also, the Board should deny the request for a stay of processing and approval of all permits because it does not have the authority to issue such a stay, and the issue is not ripe for consideration.

Sincerely,
GOULSTON & STORRS, P.C.



Cary R. Kadlecek
Attorney for Lock 7 Development LLC

CERTIFICATE OF SERVICE

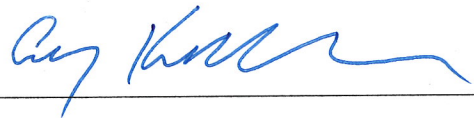
I hereby certify that on February 26, 2013, copies of the attached letter were delivered via U.S. Mail or email to the following:

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Cary Kadlecek