

**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 2012 KALORAMA ROAD,
NW, WASHINGTON, DC 20009
SQUARE 2537, LOT 0150 (R-5-B)**

Appeal No. 18540

AND REQUEST FOR STAY

RESPONSE TO DISTRICT OF COLUMBIA'S OPPOSITION TO MOTION TO STAY

The Appellant, 2101 Connecticut Avenue Cooperative Apartments, Inc. (the "Cooperative"), by and through its duly authorized counsel, Linowes and Blocher LLP, respectfully submits this response to the District of Columbia's Opposition to Motion to Stay and states as follows:

Appellee, the District of Columbia Department of Consumer and Regulatory Affairs (the "DCRA"), filed an Opposition to Motion to Stay on February 26, 2013, arguing that the Board of Zoning Adjustment (the "Board") has no authority to grant the requested relief and that the requested relief was overreaching and unnecessary. The Cooperative disputes both of these arguments and submits that the Board has in the past acted with regard to similar stays and the requested action is necessary to serve the public interest.

First, DCRA's claim that the Board is only authorized to grant stays on final, written decisions issued after a hearing is based on an incomplete reading of D.C. Code § 6-641.07(g)(4). A complete reading of the statute states, in pertinent part, "In exercising the above-mentioned powers, the Board of Adjustment may,...reverse or affirm, wholly or partly, or may modify the order, requirement, decision, determination, or refusal appealed from or may

make such order as may be necessary to carry out its decision or authorization, and to that end shall have all the powers of the officer or body from whom the appeal is taken.” D.C. Code § 6-641.07(g)(4)). The statute specifically authorizes the Board to act as the officer or body and to take a broad range of actions. Further, it allows the Board to make an order that “may be necessary” to carry out its future decision. Otherwise, the language referencing “such order as may be necessary” would be superfluous because within the first stated powers of reversing, affirming or modifying, the necessary actions would have already been taken. Therefore, in order to protect the Board’s ability to meaningfully reverse, affirm or modify the Zoning Administrator’s Decision, the Board must have the authority to stay any further actions, including DCRA’s issuances of permits, which might be contrary thereto.

Next, in Appeal No. 10827, *Mehmet Kocak and Philly Pizza & Grill, Inc.*, decided on November 17, 2009, the Board disagreed with DCRA’s similar arguments alleging that the Board did not have the power to grant a Stay. In the *Kocak* case, the Board determined that it had jurisdiction because DCRA had refused to stay a revocation notice. In essence, the Board concluded that D.C. Code § 6-641.07(g)(4) authorized the granting of a Stay because the law authorized the Board to “hear and decide appeals where it is alleged by the Appellant there is an error in any... refusal made by the inspector of buildings [now DCRA] in the ... enforcement of any regulation adopted pursuant to this act.” Further, the Board went on to find that in the end it could “have all the powers of the officer or the body from whom the Appeal is taken.” *Id.*

In this instance, pursuant to an email request sent by the Cooperative’s counsel on December 6, 2012, the Zoning Administrator, Matt LeGrant, by email dated December 7, 2012, stated, “I have no authority to delay or refuse to issue any building permits for these properties.” (copy attached as Exhibit “A”) Therefore, based on the Board’s own precedent, the Zoning Administrator’s refusal to grant a Stay, allows the Board to accept jurisdiction and rule on the requested Stay.

Moreover, in Appeal No. 15129 of Richard B. Nettler, issued on November 21, 1989, the Board granted a motion for an emergency stay to stop construction until the date the Board was scheduled to decide the Appeal. In that case, the Board relied on the precursor to D.C. Code §6-641.07(g)(4) to conclude that it had the authority to stay the construction “just as the Zoning

Administrator has authority to stop work pursuant to a permit.” Accordingly, a review of prior Board decisions establishes that the Board has, indeed, stayed potential DCRA actions pending the Board’s review of an appeal in the past. DCRA’s argument that the “Board cannot grant” this Stay is without merit.

The requested relief is reasonable and not overreaching or unnecessary as alleged by DCRA. The Cooperative is only aware of one building permit, designated Building Permit No. B1303106, applied for on January 14, 2013 (the “Building Permit”) for the subject Property located at 2012 Kalorama Road. However, the Cooperative is not privy to the details of this Permit. Precisely because of the continuing actions of the developer of the Property, who is likely the Applicant of this Permit, to move forward with construction without resolution of all issues, including zoning and historic preservation, this Permit and any others for the Subject Property should be stayed. Further, without knowing the details of this Permit application, we must assume that if it were implemented it would destroy the historic structure and cause irreparable harm to the Property, possibly in violation of zoning and historic preservation restrictions.

For these reasons, the Cooperative asserts that the Stay related to Appeal No. 18540 is appropriate and necessary, is within the Board’s jurisdiction, and would serve the public interest. Further, the Cooperative is likely to prevail on the merits, irreparable injury will result if denied, and the opposing party will not be harmed by granting of the Stay.

Respectfully submitted,

LINOWES AND BLOCHER LLP

A handwritten signature in black ink, appearing to read "Emily J. Vaia", is written over the printed name.

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February 28, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 28th of February, 2013, a copy of the foregoing was mailed, first class postage prepaid to:

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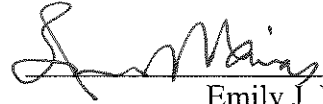
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Emily J. Vaia

Vaia, Emily J. - EJV

From: LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>
Sent: Friday, December 07, 2012 5:17 PM
To: Vaia, Emily J. - EJV
Cc: Majett, Nicholas (DCRA); Dennee, Timothy (OP)
Subject: RE: 2012-2014 Kalorama Rd. N.W.
Attachments: 12035_2012-Kalorama-Rd_A-100 - ZONING ANALYSIS.pdf; 2014-Kalorama-RD_Survey.pdf; 2014-Kalorama-Rd_A-100 - ZONING ANALYSIS.pdf; Det Let re 2014 Kalorama Rd NW to Schneck 12-5-12.pdf; Det Let re 2012 Kalorama Rd NW to Schneck 12-5-12.pdf

Emily J. Vaia - Board Representative of 2101 Connecticut Avenue Cooperative, Inc.,

As requested, I am enclosing the recent determination letters, and their respective attachments, issued by my office for these properties. I do need to advise the Cooperative that I have no authority to delay or refuse to issue any building permits for these properties; that being said, there has not been any application for the construction that the letters describe.

I will call you early next week as you have suggested.

Best Regards,

Matthew Le Grant

Zoning Administrator

Dept of Consumer and Regulatory Affairs

Government of the District of Columbia

1100 4th St SW - Room 3100

Washington, DC 20024

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Email: matt.legrant@dc.gov <<mailto:matt.legrant@dc.gov>>

Web: <http://dcra.dc.gov/DC/DCRA/Permits/Certificates+of+Occupancy+and+Zoning>

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<<http://www.onefund.dc.gov>> . One City, Working Together!

From: Vaias, Emily J. - EJV [<mailto:EVaias@linowes-law.com>]

Sent: Thursday, December 06, 2012 1:33 PM

To: LeGrant, Matt (DCRA)

Subject: 2012-2014 Kalorama Rd. N.W.

Mr. LeGrant – On behalf of the board of 2101 Connecticut Avenue Cooperative, Inc., I am requesting a copy of your determination letter for the property located at 2012-2014 Kalorama Rd, N.W. In addition, you will be receiving a Resolution from the ANC (approved last night) requesting that all permits be withheld for this Property unless and until the Historic Preservation Review Board has a chance to reopen/reconsider the case. Please call me to discuss this matter further. Thank you – Emily

Emily J. Vaias

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