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January 28, 2014

BY HAND DELIVERY

Lloyd J Jordan, Esq
Chairperson
Board of Zoning Adjustment
441 4th Street, N W , Suite 210
Washington, D C 20001

Re BZA Application No 18651
319 A Street, N E
Rear of 319 and 321 A Street, N E
(Lots 22 and 827, Square 786)

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OFFICE OF THE CLERK

Dear Chairperson Jordan and Members of the Board

On behalf of the Applicant, please accept the attached Draft Development and Construction Management Agreement, including Exhibit "B" (Proposed BZA Conditions) ("Development Agreement") for filing in the above-referenced case

On November 5, 2013, the Board granted a continuance of the hearing based on a joint request from the Applicant and surrounding property owners ("Neighbors") Since then, the Applicant and Neighbors have met on November 26 and December 18, 2013 and January 16, 2014 These meetings were a meaningful and productive discussions of the issues related to the proposed project, including the draft Development Agreement which has been revised and proffered to the Neighbors

As set forth in the Development Agreement, the Applicant respectfully requests the Board to adopt the Proposed BZA Conditions in granting approval of this Application

Very truly yours,

GREENSTEIN DELORME & LUCHS, P C

John Patrick Brown, Jr

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18651
EXHIBIT NO. 46



GREENSTEIN DELORME & LUCHS, P.C.
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Lloyd J. Jordan, Esq.
January 28, 2014
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Enclosure

By Electronic Mail

cc: ANC 6C
Mr. Matthew Jessick, Office of Planning
Neighbors
Martin Sullivan, Esq.

**Development and Construction Management Agreement
BZA Case 18651
Application of Peter J. FitzGerald**

This Development and Construction Management Agreement (“Agreement”) is made and entered into as of this ____ day of January, 2014 (“Effective Date”) by and among Peter J FitzGerald, and his authorized agent, John H. FitzGerald, (owner of 319 and the rear of 321 A Street, N E , Lots 22 and 827 in Square 786) (“Owner”) and Brian M. Stansberry (owner of 308-312 Millers Court, N.E), Phillip Risinger (owner of 311 A Street, N.E), Elliot Eisenberg (owner of 321 A Street, N.E), Sheila Hollis and John Hollis (owners of 325 and 327 A Street, N.E), Pam Schmidle and Robert Schmidle (Owners of 317 A Street, N.E), Robert Karen Wallace and Andrew Wallace (owners of 315 A Street, N.E), Donna McLean and Marcus Peacock (owners of 308 A Street, N E), Chris Nolde (owner of 313 A Street, N E.), Janet L. Schmidt (owner of 14 Fourth Street, N.E), Susan Clain (owner of 310 East Capitol Street, N.E , unit F), and Gerald McDonald (owner of 314 A Street, N E) (“Neighbors”) (collectively the “Parties”).

1. **Introduction.** In conjunction with the pending Board of Zoning Adjustment (“BZA”) Case No 18651, the Owner and Neighbors have met on November 24 and December 18, 2013, and January 16, 2014, to review the proposed demolition of the existing garages and construction of a two-story “single-family dwelling” (11 DCMR § 199 1) on a lot to be subdivided (“Site”) on Miller’s Court (“Project”). As a result of these meetings, the Owner and Neighbors desire to enter into this Agreement to set forth the specific terms and conditions for the requested BZA approval of the Project and for the Owner’s demolition and construction of the Project. The Owner and its employees, contractors and subcontractors shall ensure through this Agreement a safe, well-

well-managed workplace that minimizes the impacts of the construction on the Neighbors and their properties.

2. **Approved Plans.** The development of the Project shall be in accordance with the plans approved by the BZA and marked as Exhibit in the record. The footprint of the Project will not encroach on the public alley, except for the gas line hook up/meter on the 4th street facade of the structure which be protected by bollards or other enclosure, as shown on the attached Conceptual Site Plan and Elevation, attached as Exhibit A

3. **BZA Conditions.** The Owner will enter into the BZA record this Agreement and request the BZA approval be subject to the conditions set forth in Exhibit B herein.

4. **Enforcement.** In addition to the enforcement rights of the Parties, the approved BZA conditions and terms of this Agreement shall be incorporated into any permits required and issued by the District of Columbia and enforceable by the Office of Zoning, the Zoning Administrator and the Department of Consumer and Regulatory Affairs, the Department of Transportation, Department of Public Works, and other District agencies.

5. **Preliminary Schedule of Construction.** The schedule of construction is based on the date of BZA approval. The preliminary construction timetable is as follows:

BZA Approval of Case No. 18651	February 2014
Raze Permit	April 2014

Building Permit	July 2014
Substantial Completion	February 2015

6. **Phased Demolition and Construction.** The demolition and construction of the Project shall proceed in two phases, including:

- a. Phase I Demolition, Site and Utility Work, Shell and Under Roof (Estimated Duration 8 - 10 weeks); and
- b. Phase II Interior Build Out and Finish Work (Estimated Duration 12 - 16 weeks).

Phase I will not begin until all permits have been obtained for the project and the Owner is ready to proceed with construction. To the greatest extent possible, demolition and construction activities will be continuous and pursued to expeditiously to complete the project as soon as feasible. Owner will use its best efforts to plan and schedule demolition and construction activities to avoid unnecessary delays and periods of extended inactivity.

7. **Communication.** The Owner shall designate a representative to be the key contact the construction period who is authorized to address complaints and respond to inquiries as the contact for the Neighbors regarding construction activities ("Representative"). The Representative will hold monthly meetings to provide construction updates. The Representative shall be accessible during all business hours and for emergencies at any time. The Owner will

provide the Neighbors with the Representative's name, telephone number, cell phone number
e-mail address

8. **Compliance with D.C. Law.** The Owner agrees that all construction contracts will require that all construction personnel involved in the Project strictly follow the applicable D.C. laws for construction noise. In addition, the Owner shall ensure that such construction contracts require contractors and subcontractors to use commercially reasonable technology for quiet construction, including, but not limited to, prohibiting the idling of trucks, prohibiting or limiting to an absolute minimum the use of air compressors (which, if used, shall be the quietest compressors reasonably available commercially) and limiting to the greatest extent practicable noise emanating from the "beep beep" of trucks backing up.

9. **Daily Work Hours.** Although D.C. Law allows construction work in residential neighborhoods between the hours of 7:00AM and 7:00PM on weekdays and on Saturdays, the Owner agrees to limit construction work to exclusively weekdays (Monday – Friday) on the following schedule.

a. Phase I 8:00 am to 6:00 pm, and

b. Phase II. 7:00 am to 7:00 pm (with any unusually noisy work starting at 8:00 am).

Work will not be performed on the weekends or legal holidays. Exception to these hours and days will be limited to emergencies, but all emergency work will still be consistent with

applicable D C laws and regulations Construction work includes any deliveries or waste and any other activities that produce substantial noise. No later than the end of the authorized Daily Work Hours, all work will have ceased, all workers will have left the Site and the Site will be secured The Owner agrees to make this restriction a condition of the BZA Order.

10. Demolition. All demolition work shall occur within the Project site or the rear of 319 A Street, N.E., including any dumpster used Demolition materials or any other debris will not be permitted in the public alley or any other public space.

11. Dumpster. No dumpster will be located in the public alley or any other public space. The Owner may locate a dumpster within the footprint of the Project site or between 319 A Street, N.E. and the Project Site.

12. Construction Equipment and Materials. All construction equipment and materials will be stored and/or maintained on the Project Site or between 319 A Street, N.E. and the Project Site Owner will take all required precautions for the removal of lead paint and any other hazardous materials, including but not limited to plastic enclosure and dust suppression Demolition and excavation for footings will require temporary use of the alley for a dump truck and/or backhoe, but this will be limited to only the time required to actually complete the immediate work.

13. Temporary Scaffolding. Temporary Scaffolding with a width of approximately three (3) feet will be allowed in the public alley under the following restrictions:

- a Used for the erection of the exterior walls above the first floor and roof,
- b Shall only be used on one public alley side of the Project at a time Scaffolding on the Fourth Street side of the Site will not be in place prior to 9:00 am to allow residents to leave for work before any obstruction of the alley occurs, and
- c. Shall be removed when not in use, including overnight, weekends and legal holidays.

14. Utility Work. The Project will include the following utility work at Owner's expense:

- a Replacement of the existing telephone/utility pole to maintain the existing service, and
- b Construction of a new water line from A Street down the alley to the Site

15. No Construction Parking. The Owner shall prohibit construction workers, suppliers, or other construction-related personnel and vehicles from parking, standing, waiting or idling in the public alley or in or blocking private parking spaces The Owner will take all commercially reasonable efforts to enforce such prohibition, including placing such prohibition in the contract for each contractor and subcontractor Additionally, the Owner and its contractor will investigate the availability of off-site, private parking for construction-related vehicles, as required

16. Alley Access and Traffic. The construction will be conducted in order to minimize disruption to public alley access for Neighbors' vehicles and deliveries, emergency vehicles and trash collection. The Owner, except in an emergency, will provide at least 72-hours notice to the Neighbors of any activity that will require any part of the public alley's temporary (longer than 2 hours) closing in order to minimize disruption and allow alternative planning. Owner will use its best efforts to ensure that during any temporary blocking of one part of the alley, alternative access will be maintained through other parts of the alley system to and from the adjoining public streets. Owner will be especially careful to ensure that any temporary blocking of the alley will not unreasonably restrict access to the rear and/or parking for the houses on A Street and Fourth Street. If requested and feasible, Owner will promptly move and/or relocate any temporary obstruction to the alley to allow access for A Street and Fourth Street residents.

17. Repair of Damage to Adjacent Alley. The Owner (through its General Contractor, required utility deposits and/or D C. Water) shall be responsible for the prompt repair of any "cuts" it makes or which are made for its benefit into the surface of the public alley for utility or other work and for any damage to such road surfaces caused by its construction activities (exclusive of normal wear and tear and general public use of such alley).

18. Disruption of Services to Neighbors. The Owner (or his Representative) will communicate with all relevant utilities (e g PEPCO, Washington Gas, DC Water and Sewer Authority, Verizon, Comcast, etc) to assure that the Neighbors will be notified at least 72 hours advance of any potential major disruption of public or private utility, cable, internet or phone services, depressurization of water, or disruption of sewer lines resulting from activities on the

should Neighbor's properties be without said services for longer than four (4) hours and/or overnight

19. **Cleanliness.** The Owner shall be required to maintain a clean work-site and surrounding public alley, including removal of trash, dirt and mud, and other debris from construction activities at the end of each work day. No construction related trash or materials will be deposited in the private trash cans belonging to the Neighbors.

20. **Support of the BZA Application and Agreement to Support BZA Applications of Neighbors.** The Owner agrees to the BZA imposing conditions to approval of the BZA Order as are reasonable and necessary to effectuate the terms set forth in this Agreement.

21. **Dispute Resolution and Enforcement.** This Agreement is being adopted by the Owner for the benefit of the community and is an agreement between the Owner and Neighbors. The Parties intend that if concerns or disputes arise, these concerns and disputes should be addressed collegially to the maximum extent possible, and the parties anticipate that such collegial efforts will be successful. A signatory may, however, if it deems the matter particularly serious and if collegial efforts have not resulted in appropriate relief, pursue the legal and equitable remedies normally available to a party to an agreement, including any remedies in a court of law. The agreement of the Owner to the foregoing is subject to and conditioned on the Neighbors supporting the Project before the BZA as evidenced by the Neighbors submitting a letter of support to the BZA prior to January 29, 2014 (the Neighbors are not required to attend the public hearing of the BZA pertaining to the Project currently scheduled for January 29, 2014).

22. Counterparts. This Agreement may be executed in counterparts but each such fully executed counterpart shall constitute one and the same Agreement.

(Signatures appear on the following page)

The Parties have signed this Agreement effective as of January ____, 2014.

Peter J. FitzGerald, Owner

John H FitzGerald, Owner

Date _____

Date: _____

Phillip Risinger, Neighbor

Brian M. Stansberry, Neighbor

Date _____

Date _____

Elliot Eisenberg, Neighbor

Sheila Hollis and John Hollis, Neighbors

Date _____

Date. _____

Pam Schmidle and Robert Schmidle,
Neighbors

Karen Wallace and Andrew Wallace,
Neighbors

Date. _____

Date. _____

Donna McLean and Marcus Peacock,
Neighbors

Chris Nolde, Neighbor

Date. _____

Date. _____

Janet L Schmidt, Neighbor

Susan Clain, Neighbor

Date. _____

Date. _____

Gerald McDonald, Neighbor

Date. _____

Date: _____

EXHIBIT B

PROPOSED CONDITIONS FOR BZA 18651

1 The development of the Project shall be in accordance with the plans approved by the BZA and marked as Exhibit___ in the record. The footprint of the Project will not encroach on the public alley, except for the gas line hook up/meter on the 4th street facade of the structure which will be protected by bollards or other enclosure, as shown on the Elevation, attached as Exhibit ___

2 The approved BZA conditions and terms of this Agreement shall be incorporated into any permits required and issued by the District of Columbia and enforceable by the Office of Zoning, the Zoning Administrator and the Department of Consumer and Regulatory Affairs, the Department of Transportation, Department of Public Works, and other District agencies.

3. The demolition and construction of the Project shall proceed in two phases, including:

- a. Phase I Demolition, Site and Utility Work, Shell and Under Roof
(Estimated Duration: 8 - 10 weeks), and
- b Phase II Interior Build Out and Finish Work (Estimated Duration. 12 - 16 weeks)

Phase I will not begin until all permits have been obtained for the project and the Owner is ready to proceed with construction. To the greatest extent possible, demolition and construction activities will be continuous and pursued expeditiously to complete the project as soon as feasible. Owner will use its best efforts to plan and schedule demolition and construction activities to avoid unnecessary delays and periods of extended inactivity

4 The Owner shall designate a representative to be the key contact during the construction period who is authorized to address complaints and respond to inquiries as the key contact for the Neighbors regarding construction activities ("Representative") The Representative will hold monthly meetings to provide construction updates. The Representative shall be accessible during all business hours and for emergencies at any time. The Owner will provide the Neighbors with the Representative's name, telephone number, cell phone number and e-mail address

5 The Owner agrees that all construction contracts will require that all construction personnel involved in the Project strictly follow the applicable D C. laws for construction noise. In addition, the Owner shall ensure that such construction contracts require contractors and subcontractors to use commercially reasonable technology for quiet construction, including, but not limited to, prohibiting the idling of trucks, prohibiting or limiting to an absolute minimum the use of air compressors (which, if used, shall be the quietest compressors reasonably available commercially) and limiting to the greatest extent practicable noise emanating from the "beep beep" of trucks backing up

6. The Owner agrees to limit construction work to exclusively weekdays (Monday – Friday) on the following schedule.

- a. Phase I: 8:00 am to 6:00 pm; and
- b. Phase II: 7:00 am to 7:00 pm (with any unusually noisy work starting at 8:00 am).

Work will not be performed on the weekends or legal holidays. Exception to these hours and days will be limited to emergencies, but all emergency work will still be consistent with applicable D.C. laws and regulations. Construction work includes any deliveries or waste disposal and any other activities that produce substantial noise. No later than the end of the authorized Daily Work Hours, all work will have ceased, all workers will have left the Site and the Site will be secured.

7. All demolition work shall occur within the Project site or the rear of 319 A Street, N.E., including any dumpster used. Demolition materials or any other debris will not be permitted in the public alley or any other public space.

8. No dumpster will be located in the public alley or any other public space. The Owner may locate a dumpster within the footprint of the Project site or between 319 A Street, N.E. and the Project Site.

9. All construction equipment and materials will be stored and/or maintained on the Project Site or between 319 A Street, N.E. and the Project Site. Owner will take all required precautions for the removal of lead paint and any other hazardous materials, including but not limited to plastic enclosure and dust suppression. Demolition and excavation for footings will require temporary use of the alley for a dump truck and/or backhoe, but this will be limited to only the time required to actually complete the immediate work.

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- (c) Shall be removed when not in use, including overnight, weekends and legal holidays.

11. The Owner shall prohibit construction workers, suppliers, or other construction-related personnel and vehicles from parking, standing, waiting or idling in the public alley or in

or blocking private parking spaces. The Owner will take all commercially reasonable efforts to enforce such prohibition, including placing such prohibition in the contract for each contractor and subcontractor. Additionally, the Owner and its contractor will investigate the availability of off-site, private parking for construction-related vehicles, as required.

12. The construction will be conducted in order to minimize disruption to public alley access for Neighbors' vehicles and deliveries, emergency vehicles and trash collection. The Owner, except in an emergency, will provide at least 72-hours notice to the Neighbors of any activity that will require any part of the public alley's temporary (longer than 2 hours) closing in order to minimize disruption and allow alternative planning. Owner will use its best efforts to ensure that during any temporary blocking of one part of the alley, alternative access will be maintained through other parts of the alley system to and from the adjoining public streets. Owner will be especially careful to ensure that any temporary blocking of the alley will not unreasonably restrict access to the rear and/or parking for the houses on A Street and Fourth Street. If requested and feasible, Owner will promptly move and/or relocate any temporary obstruction to the alley to allow access for A Street and Fourth Street residents.

13. The Owner (through its General Contractor, required utility deposits and/or D.C. Water) shall be responsible for the prompt repair of any "cuts" it makes or which are made for its benefit into the surface of the public alley for utility or other work and for any damage to such road surfaces caused by its construction activities (exclusive of normal wear and tear and general public use of such alley).

14. The Owner (or his Representative) will communicate with all relevant utilities (e.g. PEPCO, Washington Gas, DC Water and Sewer Authority, Verizon, Comcast, etc.) to assure that the Neighbors will be notified at least 72 hours in advance of any potential major disruption of public or private utility, cable, internet or phone services, depressurization of water, or disruption of sewer lines resulting from activities on the Site should Neighbor's properties be without said services for more than four (4) hours or overnight.

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