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Real Estate | Zoning | Business Law

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July 22, 2014

By IZIS Filing

Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001
bzasubmissions@dc.gov

Re: Post-Hearing Submission – BZA Applications No. 18765 (3919 Fulton) and No. 18784 (3915 Fulton)

Dear Chairman Jordan and Members of the Board:

At the close of the consolidated hearing for the above-referenced applications (the “Applications”), the Board closed the record and scheduled a decision meeting for July 29, leaving the record open for the Applicants to submit certain requested information. As stated by the Board, the Applicants were to take “one more shot” at working with the neighbors to possibly modify the design of the buildings proposed in the Applications.

In addition to its guidance on possible design modifications, the Board also requested that the Applicants offer proposed conditions, including a condition related to RPP restriction, and to have the project architect articulate the context for his chosen design. The Board provided that the post-hearing submission from the Applicants be submitted by July 22.

The Applicants therefore submit the enclosed materials in response to the comments and concerns of the Board and of the community. The Applicants have had extensive discussions with the community, both before and after the June 24th hearing. These discussions have included at least four (4) meetings with a core “working group” made up of 5 or 6 community members (the “Working Group”), as represented by Mr. George Brenkert, four meetings before ANC 3D, numerous e-mail exchanges between the Applicants’ team and the Working Group, and the Applicants full response to a 96-question interrogatory from the Working Group. The Applicants have made numerous significant changes to its original proposal, in design and substance, which directly address the Working Group’s concerns.

The Applicants addressed the remaining concerns about the Applications as described herein.

I. Design.

As evidenced by the amount of time spent on design by the Working Group at the hearing, as well as before and after the hearing, the design of the proposed buildings was the community’s primary concern (particularly following the Applicants’ commitment to condominiums vs. rentals and to reduce the number of

bedrooms by a third). The Applicants are pleased to report that, following further design modifications by the Applicants, it has come to agreement with the Working Group regarding the design of the Buildings.

The design modifications requested by the Working Group, and now offered by the Applicants (shown in the attached Exhibit A), include:

- Overhanging cornice added to the 2-story portion of the Buildings.
- Projecting trim elements added.
- Entry walks and steps to be colored concrete.
- Horizontal muntins added to entry door.
- Horizontal bands added to divide accent panel.
- Modified exterior shell colors, now to be chosen by the Working Group.

The Working Group has seen the “final” renderings, which are submitted herewith as Exhibit B, and they have registered their approval with the design modifications, based on an e-mail from the Working Group’s representative, Mr. George Brenkert (attached as Exhibit C). Mr. Brenkert did, however, note that the Working Group had not formed a consensus on the issue of the exterior color of the Buildings. Mr. Brenkert therefore accepted the Applicants’ offer to allow the Working Group to choose the eventual exterior colors. The Applicants were happy to agree to that condition, provided the color chosen is not an unmarketable color in the opinion of the Applicants’ realtor. The Applicants therefore submit the “earth-tone” color currently in the renderings, but propose the condition that the Applicants will use the color reasonably chosen by the Working Group, as same will be submitted to the Applicants by Mr. Brenkert by October 31, 2014. If no chosen color is submitted, then the exterior color shall be as provided in this submission.

II. Other Modifications and Proposed Conditions.

In response to concerns expressed by the Working Group and other neighbors throughout this process, the Applicants have made other modifications and representations. Some of the modifications, including the reduction from 3 bedrooms to 2 bedrooms (for which Mr. Brenkert expressed satisfaction at the June 24th hearing) have already been included in the Applicants’ previous submissions.

The Applicants are also offering the following proposed conditions:

- The Buildings will be subject to a condominium regime under the District of Columbia Condominium Act.
- The Declaration of Condominium covenant will include language that no more than three (3) of the six (6) units in each Building shall be rented at one time, precluding any full conversion of either Building to rental apartment use.
- The Applicant will replace all removed trees ‘like-for-like’ and the replacement trees will be at least 10 feet high.
- The Applicant will provide proof of funds to the Working Group after issuance of buildings permits but prior to commencement of construction.

- The Declaration of Condominium will include a requirement that a unit owner may acquire only one Residential Parking Permit (RPP) per unit from the District.
- The Applicant proposes that the Board include as a condition that the District may not issue more than one Residential Parking Permit for each living unit.

III. Context for the Architect's Design.

The Board requested that the architect provide a more complete explanation of the context of the proposed design. Such explanation is included herein as Exhibit D.

IV. Advisory Neighborhood Commission.

It is perhaps a sign of the strength of these Applications that the 4-member ANC did not vote to oppose the project, despite the large number of residents that attended the ANC meetings to express their objections. The single-member district commissioner and chairman did in fact vote to support the Applications. After the June 24th hearing, the ANC opted to not hold another vote, but it did host a meeting between the Applicants and the community, at which great progress was made on design modifications, resulting in the revised design being accepted by the Working Group.

V. Summary.

The Applicants assert that they have submitted two proposals which safely meet the special exception requirements of § 353 for new residential developments in the R-5-A zone. The Office of Planning, which holds a prominent role in Section 353 cases, pursuant to §353.4, is charged with “comment and recommendation on the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading as they relate to the future residents of the project and the surrounding neighborhood.” Under these guidelines, the Office of Planning supported the Applications, without qualification, even before all of the proposed modifications and design changes made by the Applicants.

In response to concerns from the community, the Applicants have made significant modifications to the original proposals, including reducing the bedrooms by a third, committing to condominiums and restrictions on their ability to be rented, providing larger trees than required by the GAR regulations, and agreeing to restrict RPP permits to one per unit.

The proposed projects comply with all zoning density limits, including height, lot occupancy, and FAR, as well as the GAR requirements, which notably do not apply to the 8-unit addition immediately to the west or the 11-unit condominium building immediately to the east.

Finally, the Applicants and their architect have undertaken extensive work with the community to revise the design after the June 24th hearing and have come to agreement with the Working Group as a result, thereby resolving the Working Group's primary remaining concern.

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Because the Applications satisfy the special exception requirements of §3104 and §353, and in light of the response to the Board's and the community's concerns, as noted above, the Applicants respectfully request approval of the Applications.

Respectfully,

A handwritten signature in blue ink that reads "Martin P. Sullivan". The signature is written in a cursive, flowing style.

Martin P. Sullivan, Esq.