IZ Zoning Special Exception Request

Background

Zoning Administration's Stance

The main reason offered by the Office of the Zoning Administrator for not requesting the IZ set aside is because the ZA claims that we filed the building permit applications in phases and under two different names intentionally to avoid complying with IZ regulations. The names being Kady Group Inc and Eckington Station LLC. Are different from ownership names in the Deed of Trust.

Our Response

- The naming difference on the application was a **clerical mistake** resulting from the name on the architectural drawings/original purchase contract being used rather than the name on the deed of trust. (see Exh. F#1)
- All correspondence with the ZA was done under the names Darryl Sulekoiki and Kady Group Inc
- **Kady Group sought out the DCRA's expertise in good faith** and relied on their expertise to call out any necessary requirements prior to the beginning of construction.
- DCRA's permitting process clearly outlines that checks are built into the review process to catch clerical errors, such as the one made here, and reveal permitting requirements, such as IZ and the corresponding bonus density assigned to developers - Both these facts were not made known to our team prior to construction.

Agenda

Today's Goal

- Request of Exemption from IZ Compliance
- Overview of the Permitting Process in D.C.
- Timeline leading up to DC Zoning sanctioned stop work order.
- Pre-Application Due Diligence with DCRA
- Economic Viability Findings
- Request of exemption on Parking

Request of Exemption from IZ Compliance

Today, Kady Group is requesting an exemption from IZ Compliance due to the negative economic impact resulting from the late notice of IZ Compliance to our firm by the Zoning Administration office without an opportunity to realize bonus density to offset our substantial loss in unrealized proceeds.

Overview of Permitting Process

1. **Due Diligence prior to submitting application.**
   DCRA requires applicants for large projects to schedule a PRDM (Preliminary Design Review Meeting) – which provides applicants with a preliminary review of their building plans prior to filing with the purpose of eliminating unforeseen obstacles during review of permit applications. ***(see exhibit Exh # F-3)***
2. **Environmental Review Process (see Exh # F-5 SOP)**
3. **Preparing Your Permit Application**
4. **Intake/Completeness Check** – All applications are reviewed in the permit center to ensure requirements have been met. **(see *Exh # F-3* & Exh # F-5)**
5. **Plan Submittal** – Application is again reviewed for completeness and passed along to a plans review coordinator who determines the complexity of the project.
6. **Plan Review** – Depending on complexity, the application is routed through review staff in the disciplines of zoning, mechanical, plumbing, electrical, fire, and structural. **(see *Exh # F-3* & Exh # F-5)**
7. **Permit Issuance** – Only when all disciplines have reviewed and approved the application is a building permit issued. The Zoning approval signifies that all zoning requirements have been met.
8. **Building and Certificate of Occupancy ("C of O") Inspections**
9. **C of O Issuance.** The C of O issuance signifies that the construction has been completed in accordance with all zoning and code requirements. **(see BZA Exhibit NO 6)**

[Source: Appendix 1 – DCPermittingProcess.pdf]

Timeline

2006

May - Initial contract between The Griffith's family and Kady Group Inc. and/or Assigned was signed and ratified. No Entity had been formed to own the property.

October - Due to the Market downturn, economic outlook of the project was no longer viable and the contract fell through. **(see Exh F #1)**

2012

July - The Griffith's family came back to Mr. Sulekoiki with an offer to sell the property to Kady Group Inc. A new contract in the name of Kady Group and Darryl O.A. Sulekoiki, Buyers and Griffith's family, Seller was written.

1st Loan was obtained contingent on the development of 16 units (8 lots, with 2 units per lot) with 4 lots per phase as the bank was only willing to fund 50% of the project to start at the time.

October 16th – Request for a meeting with Justin Bellow, a DCRA Zoning Reviewer, to discuss the possibility of ***(1) subdividing the lot into 8 lots, with 2 units per lot (R-4) and (2) What are the other possibilities/outcomes with zoning.*** Mr. Bello was no longer with the zoning office and the email was forwarded to the zoning Administrator. At this point, IZ and bonus density were not mentioned.

Inclusionary Zoning Compliance and Bonus Density Requirement

If a project requires IZ Compliance, a CIZC application must be submitted no later than at the time of building permit application submission and so it **must be determined that an IZ application is needed during the pre application phase.**

As compensation to the developer, there is a 20% increase of "**BONUS DENSITY**" which allows the developer to maintain the economic viability of the project notwithstanding the economic loss from the IZ units. In this case, given that only 2 units per row structure are permitted in the R-4 zone, the bonus density can only be achieved by subdividing in accordance with the smaller lot sizes permitted with IZ. One additional lot would have yielded the 2 units required by IZ without substantial adverse economic impact on the project.

Pre Application
Due Diligence

Aug 4 2012
Began reaching out to DCRA zoning administrator to discuss the project prior to settlement and determine if there were any restrictions with building. Sent 4 emails over the course of 2 months with no response. [See Appendix]

Nov 26 2012
Sat down with DCRA zoning administrator on Nov. 26, 2012,and presented subdivision intent from 6 lots to 8 lots, yielding (2-units per lot) 16 units total, to be constructed in phases and the zoning administrator offered verbal approval with a request for preparation of the subdivision plat for his approval without ever saying or requesting any set aside for IZ units – which was submitted.

Feb 4 2013
Settled on the Property. Continued to reach out to zoning administrator for subdivision approval and for confirmation that there were no other restrictions or zoning requirements on the project.

Mar 2013
For five months after not hearing back from zoning Administrator, I reached out to Zoning Administrator's assistant Kathleen Beeton regarding approval of subdivision plat

Apr 2013
After my Second appeal to Kathleen, Received Approval. No other restrictions were surfaced by DCRA Zoning [See Appendix]

May 2013
Made first submission for building permits for phase 1 and phase 2 – 4 lots.

Permitting Process *Due Diligence*

Even after submission of building permits, and multiple checks built into the permit review process by the DCRA, there was still no notification of IZ compliance requirements or a discrepancy in owner information from the public record.

May 2013 — First Building Permit Applications Submitted, pending **consent* agreement** from the owners of 2110 3rd Street.

July 2013 — Second set of Building Permit Applications were Submitted, pending consent agreement from the owners of 2110 3rd Street.

Oct 2013 — Building Permits were issued for first set of permits for phase 1 and phase 2 .

Nov 2013 — **A Modified** Non binding Consent Agreement signed by owners of 2110 3rd Street

Dec 2013 — Building Permits were issued for second set of permits for phase 3 and phase 4.

Notification of IZ Compliance

2014 **Nov** – Almost a year after building permits were issued, with more than half of the project near completion, a notice of IZ compliance violation was received from the DCRA -- As a result, the DCRA also issued a stop work order on the property.

Issues with IZ Compliance:

- R-4 Zoning allows for only 10% of the net SF of entire project which equals 1.4 units of the entire project without Bonus density. Only way to take advantage of Bonus Density is at time of subdivision - which would have allowed 9 lots and 18 units, rather than the current configuration of 8 lots and 16 units.
- By the time notification of IZ compliance was received, it was economically unfeasible to take advantage of bonus density because the foundations for all 8 row structures were (in fact, 8 units at *97% completion, 2 units at 70% completion, and 6 units at the foundation and footing stage*.)
- Providing IZ units conflicts with terms of the loan which was approved by the lender on the basis that 16 market rate units were to be constructed.

The Law States...
D.C. Municipal Regulations

Chapter 11, Rule 2606

EXEMPTION FROM COMPLIANCE
2606.1 The Board of Zoning Adjustment is authorized to grant partial or complete relief from the requirement of § 2603 upon a showing that compliance (whether on site, offsite or a combination thereof) **would deny the applicant economically viable use of its land**.

In the alternative , we are requesting a variance from section 11-2602 applicability of IZ to the project given the extraordinary circumstances of this matter including the reliance on the permits as issued , the lengthy time prior to being informed about IZ applicability and the delays caused by subsequent efforts to negotiate a solution with DCRA which have resulted in a substantial hardship and practical difficulties in complying at this late date.

Economic Viability

For Sale Summary of Cost with Bonus Density Vs No Bonus Density Scenarios (5-15-2016)

	Scenarios for sale of units only												
	Discription of Diff Scenarios	Number of units	IZ Units set Aside	Ave Unit Size (sf)	Total SF of Units	Cost Per SF	Total Dev Cost plus Sales cost	Sales Price	PROJ CONST TERM	NOI	% NoI	YEARLY % NOI	Comments
1	All Units With Bonus Density and two IZ units set aside	16	2	1,481.47	26,666.40	$246.23	$8,645,005.85	$10,515,163.20	19 mths	$1,870,157.35	21.6%	13.5%	Cost if Bonus Density had been provided, return would have been higher and duration would have only been 19months.
2	As Built (Actual Cost) Market rate Units with no IZ units	16	0	1,542.38	24,678.05	$269.88	$8,839,328.23	$10,563,687.67	41 mths	$1,724,359.44	19.5%	4.3%	As built cost with all delays and no IZ
3	As Built (Actual Cost) Market rate Units with One IZ unit @ 80% AMI	16	1	1,542.38	29,155.12	$261.50	$8,822,464.48	$10,259,836.29	41 mths	$1,437,371.80	16.3%	3.6%	As built cost with all delays and 1 IZ AT 80 % AMI
4	As Built (Actual Cost) Market rate Units with One IZ unit @ 50% AMI	16	1	1,542.38	29,156.12	$262.50	$8,814,444.73	$10,115,336.29	41 mths	$1,300,891.55	14.8%	3.3%	As built cost with all delays and 1 IZ
4	All for Sale without Added Bonus Density with Twp (2) IZ UnitS	16	2	1,822.20	29,155.12	$262.50	$8,773,281.17	$9,373,650.37	41 mths	$600,369.21	6.8%	1.5%	As built cost with all delays and 2 IZ
5	Detail financial Analysis is available on Exh 13 thru 13-J .												

Bolan Smart Associates, the financial experts qualified to conduct the economic viability analysis, summarized the economic loss of this project as follows:

> *"Bolan Smart finds the Applicant's development costs market reasonable and the sales revenues market actual. Including no IZ units meets investor minimum thresholds for economic viability, while* ***providing for two IZ units constitutes a substantial loss****. Depending on the BZA's determination of economic viability, up to one IZ unit may be absorbed by the Applicant such that the Applicant is not actually losing actual cash value, though nonetheless being denied a normal market investor return."*

Permit History

PERMIT HISTORY

Address (Lot)	Permit No.	Permit Filed	Zoning Approved (Reviewer)	DDOT Approved (Reviewer)	Permit Issued	Status
2112 3rd Street, NE (49)	B1307457	06/04/2013	9/13/2013 (Ndaw)	10/31/2013 (C. Williams)	10/31/2013	SOLD
2114 3rd Street, NE (48)	B1307456	06/4/2013	9/13/2013 (Ndaw)	10/31/2013 (C. Williams)	10/31/2013	SOLD
2116 3rd Street, NE (47)	B1309364	07/29/2013	10/29/2013	-	12/03/2013	SOLD
2118 3rd Street, NE (46)	B1309365	07/29/2013	10/29/2013	-	12/03/2013	SOLD
2120 3rd Street, NE (45)	B1307394	05/31/2013	09/13/2013 (Ndaw)	-	10/31/2013	C of O Issued
2122 3rd Street, NE (44)	B1307393	05/31/2013	09/13/2013 (Ndaw)	10/31/2013 (C. Williams)	10/31/2013	Substantially Completed
2124 3rd Street, NE (43)	B1309366	07/29/2013	10/29/2013	-	12/03/2013	Substantially Completed
2126 3rd Street, NE (42)	B1309367	07/29/2013	10/29/2013 (J. Anderson)	11/26/2013 (C. Williams)	12/03/2013	Substantially Completed

Request for Parking Exemption

Request for Parking Special Exemption for;

- Parking for lot 43 to straddle lots 43 and lot 42 with entrance from existing curb cut and paving behind curb cut.

My Appeal to You

I am seeking BZA Approval for my application for special exemption of the project from the IZ set aside based upon lack of economic viability. The late notification of IZ enforcement, well past my ability to subdivide the site to utilize the bonus density permitted by IZ, coupled with over 16 months of project delays caused by stop work orders and unproductive back and forth with the ZA's office as to compliance alternatives, have placed my loan in default and cost over $600,000 in additional project costs. As a result, the project economics have been severely jeopardized. Assuming that my lender does not foreclose on the project, the project is expected to produce a minimum industry return of about 20% without any IZ units set aside.

In the alternative I am asking the BZA to grant a variance from IZ applicability to my project based upon the extraordinary circumstances of the late notification of IZ applicability and my reliance on the DCRA, project building permits process, and various approvals. These have resulted in practical difficulties and hardships associated with any feasible attempts to comply with the 'IZ set aside' requirements at this time.