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June 30, 2016

<u>BY IZIS ELECTRONIC FILING</u> (bzasubmissions@dc.gov)

Marnique Y. Heath, AIA
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W., Suite 210
Washington, D.C. 20001

Re: Applicant's Second Supplemental Pre-Hearing Submission
BZA Application No. 19101
2112-2126 3rd Street, N.E.
<u>Square 3561, Lots 42-49 ("Property")</u>

Dear Chairperson Heath and Members of the Board:

In preparation for the resumed public hearing on July 12, 2016, the Applicant respectfully submits the following additional information in support of this Application and in response to issues raised by the Board. Specifically, the Applicant: 1) requests to amend the Application to include a variance from the off-street parking requirement for Lot 42[1]; and 2) submits a proposal to meet the Inclusionary Zoning requirement for the Property by providing two (2) IZ units at a suitable off-site location.

I. <u>PARKING VARIANCE REQUESTED FOR LOT 42</u>

The permit issued for Lot 42 (2126 3rd Street, N.E.) included specific zoning approval for the location of the one Lot 42 required parking space on the immediately adjacent Lot 43 with an easement being provided for access. <u>Exhibit A.</u> Two years after issuance of the permit for Lot 42, the Zoning Administrator's office informed the Applicant that the approved parking did not comply and additional zoning relief was required to allow the Lot 42 parking to be located on Lot 43. As a result, the Applicant amended the original BZA Application to request special exception relief to locate the Lot 42 parking on Lot 43.

[1] The Applicant reposted the Property on June 27, 2016 to provide the required notice of the requested parking variance.

More recently, the Applicant met with DDOT to discuss potential alternatives for providing the Lot 42 parking at other locations. As a result of ongoing discussions with DDOT, the Applicant has determined that under all the existing circumstances, it would not be feasible to provide the required parking for Lot 42 on one of the adjoining seven lots in this project. Accordingly, the Applicant has amended this Application to request a variance from the off-street parking requirement of one space for Lot 42.

Under the applicable R-4 zoning restrictions, the flat constructed on Lot 42 is required to provide one standard (9' x 19') off-street parking space for the two-dwelling units. 11 DCMR §2101.1. As set forth below, the Applicant meets the area variance test. The burden of proof for an area variance is well established. The D.C. Court of Appeals has distilled a three-part test that "[i]n order to obtain [area] variance relief, an applicant must show that (1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan." *Washington Canoe Club v. District of Columbia Zoning Com'n*, 889 A.2d 995, 1000 (D.C.2005)

A. <u>The Property is Affected by an Exceptional Situation or Condition</u>

As authorized by a DCRA building permit, the Applicant constructed a row dwelling/flat on Lot 42 without a parking space on that lot. Lot 42 is triangle-shaped property and the open area in the rear of the property is narrow which will not allow a standard (9'x19') parking space. <u>Exhibit A</u>. Also, there is no vehicular access to Lot 42 from 3rd Street or Rhode Island Avenue. The existing and longstanding curb cut from Rhode island Avenue historically served the public alley and Lot 42, but DDOT has determined that access to Lot 42 is not in compliance with its current specifications and not authorized.

Although originally approved as part of the permit for Lot 42, the Applicant later sought special exception approval to locate the required Lot 42 parking on the adjacent Lot 43. However, DDOT has advised the Applicant that there is not adequate access from Rhode Island Avenue or the public alley for the proposed Lot 42 parking space on Lot 43.

Finally, the remaining six lots in the project (Lots 44 to 49) are each too narrow (17.83') to provide both the required parking space for the lot and an additional parking space to provide a parking space for Lot 42. Additionally, four of the lots have been sold to third parties and the Applicant no longer controls or has access to those properties to provide additional parking for Lot 42.

B. <u>Strict Application of the Zoning Regulations would Result in a Practical Difficulty</u>

The requested relief from the off-street parking requirement for Lot 42 is for an area variance, which requires the Applicant prove the strict application of the zoning regulations for complying with the required parking space will result in a "practical difficulty." It is important to note how the DC Court of Appeals has defined "practical difficulty." In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in *Palmer v. D.C. Bd. Of Zoning Adjustment*, 287 A. 2d 535, 542 (D.C. 1972) that, "[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [footnote omitted]. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." In area variances, applicants are not required to show "undue hardship" but must satisfy only the "the lower 'practical difficulty' standards." *Tyler v. D.C. Bd. Of Zoning Adjustment*, 606 A.2d 1362, 1365 (D.C. 1992), citing *Gilmartin v. D.C. Bd. Of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). Finally, it is well settled that the BZA may consider " . . . a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty' . . ." *Gilmartin*, 579 A.2d at 1171, citing *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976). See also, *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992). Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with regulations is burdensome, not impossible. The Applicant, as demonstrated below, meets this standard.

As clearly demonstrated, the Applicant is unable to provide the required off-street parking on Lot 42, Lot 43 or any of the remaining six lots in the completed project. Without the requested variance relief, the two dwelling units on Lot 42 which were permitted and substantially completed by the Applicant prior to being informed of the need for parking relief would be rendered ineligible for the required certificate of occupancy and uninhabitable. This potential outcome is not only a practical difficulty, but rises to level of an undue hardship on the Applicant.

C. <u>Relief Can Be Granted Without Adversely Affecting the Use of the Neighboring Property in Accordance with the Zoning Regulations and Zoning Map</u>

The Applicant currently provides thirteen parking spaces for the sixteen dwelling units which greatly exceeds the minimum eight parking spaces required for the project. The reduction of one parking space is minor and will not adversely affect neighboring property. Both the Office of Planning and DDOT have previously indicated that they would not oppose a request for a parking variance for Lot 42.

II. INCLUSIONARY ZONING

A. Background

On November 10, 2014, almost eleven months after the last four (4) permits were issued, the Zoning Administrator notified the Applicant that the project should originally have been subject to the Inclusionary Zoning requirements. Exhibit B. At that point, construction of four (4) of the flats (eight of the sixteen dwelling units) was 97% completed, the fifth flat was framed (70% completed) and the concrete foundations and slab for the final three flats had been installed. Given the advanced stage of construction, the Applicant was unable to redesign the project to meet the applicable Inclusionary Zoning requirements of 2,467.82 square feet set aside for affordable housing, including one (1) unit at 50% AMI and a second unit of 80% AMI. Based on the established and permitted designs and construction that had been completed, each of the eight flats or row dwellings had square footage ranging from 2,708.7 to 3,030.2 square feet. As a result, compliance with IZ would require two existing units and one entire row structure be devoted to affordable housing. Significantly, between 583.9 to 905 square feet would be taken for affordable housing above the applicable IZ requirement. At the same time that the Applicant would be required to provide excess affordable housing, the same as-built circumstances would not allow utilization of the available 20% IZ Bonus Density which would have allowed subdividing the Property into nine (9) lots and eighteen (18) dwelling units with approximately 3,000 square feet of additional development rights. The Office of Planning reported that based on its records for the last six years, eighty-five (85%) of matter-of-right projects have received IZ Bonus incentives. BZA Exhibit 38.

From the established facts and circumstances, it is clear that this situation and the required IZ zoning relief arose from mutual mistakes by both the parties, including DCRA's failure to follow its established permit review procedures, not any improper purpose or motive by the Applicant. The Applicant had not done any IZ required project before and did not know that Inclusionary Zoning requirements were applicable to this Project. At the same time, the District which was repeatedly consulted by the Applicant eight months before and another seven months during the permitting process, approved a subdivision creating the eight lots and reviewed and issued the eight building permits for the flats despite clear information provided that the overall project should have been subject to Inclusionary Zoning. The Applicant reasonably relied on the permits issued and proceeded with construction for more than eleven months before receiving notice that the requirements on IZ would be imposed after the fact to the substantially completed Project, but without the opportunity to utilize the benefits of bonus density that the Applicant was entitled to enjoy.

§2606.1 clearly provides:

> 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 this case, it is not necessary for the Board to find fault or assign blame to determine that this after the fact imposition of the IZ requirements on the Applicant would deny the economic viability of this project under the unique circumstances that exist now. For the Applicant, the original evaluation of the economic viability of this project and decision to invest capital, opportunity cost of capital, assume risk, and expend time and other resources were based on a project with no IZ requirements. Based on the Economic Viability analysis provided by Bolan Smart Associates, Exhibit C ("Bolan Smart Report"), based on February 2016 development budget information, a project of this type and location would have required "economic performance, producing approximately a 20% overall on return-on-cost over two to three year period" to be economically viable when making the original investment decision.

This after the fact application of the IZ requirements to a substantially as-built project, imposes dramatically different circumstances for evaluating economic viability, including:

1. 2,467.82 square feet of affordable housing requires two of the existing dwellings units be set aside;

2. The two affordable dwelling units will exceed the IZ requirement by 583.9 to 905 square feet;

3. 20% IZ Bonus forfeited with loss of two additional dwelling units and approximately 3,000 square feet of additional development rights.

4. Eighteen (18) month delay in completing project; and

5. Imposition of IZ requirements created Loan Default on construction financing.

Based on an evaluation of the current development budget information and the current circumstances, the Bolan Smart Report concluded:

> 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.

Exhibit C (Emphasis Added).

Although it is clearly not economically viable to now provide all the IZ requirements on the existing Property, the Applicant would rather not provide any affordable units at this Property based on the enormous financial strain that has been put on the project. But if the Board does not find the argument put forth compelling enough, the Applicant is able to provide reasonable affordable housing at a suitable off-site location in compliance with the requirements of §2607.1.

B. Off-Site Inclusionary Zoning Units Available

The Applicant is currently developing a small residual project at 2900 12th Street, N.E. (Square 3875, Lot 91) ("12th Street Project"). The 12th Street Project, located at the northwest corner of the intersection of Girard Street and 12th Street, N.E. will consist of four (4) flats with eight (8) dwelling units. Although the site is zoned C-1 (on 12th Street), the neighborhood is predominantly residual with R-2 zoning west of 12th Street and R-1-B zoning east of 12th Street. Exhibit D (Zoning Map).

Each flat will consist of an identical upper and lower dwelling unit. The dwelling units will each be configured as two levels with two bedrooms and two and half bathrooms with approximately 1,200 square feet each. Exhibit E. (Typical Floor Plans with IZ Unit highlighted.)

The 12th Street Project is being developed as a matter-of-right and is not subject to any Inclusionary Zoning requirements. The Applicant has submitted the required building permit applications which are being processed in the normal course by DCRA. The Applicant expects to receive the building permits by September 1, 2016 and begin construction by October 1, 2016. Based on this schedule, the 12th Street Project will be substantially completed by April to May 2017.

At the 12th Street Project, the Applicant is able to provide two (2) IZ units with a total square footage of approximately 2,400 square feet ("Off-Site IZ Units"). The Off-Site IZ Units (2,400 sf. of gross floor area) will provide approximately ninety-seven percent (97%) of the IZ requirement (2,467.82 sf.) for the Property. Each IZ unit will offered be at 80% AMI as a reasonable accommodation to the Applicant being unable to benefit from the bonus density that should have been available at the original location. The 12th Street Project will be created as a condominium, but the Off-Site IZ Units will be rental.

C. <u>Compliance With Off-Site Compliance Requirements</u>

2607 OFF-SITE COMPLIANCE

2607.1 The Board of Zoning Adjustment is authorized to permit some or all of the set-aside requirements of § 2603 to be constructed off-site upon proof, based upon a specific economic analysis, that compliance on-site would impose an economic hardship.

- **As set forth above, the Applicant has demonstrated that the unique circumstances of after the fact compliance with the IZ requirements substantially undermines the economic viability of the project and imposes an extreme and unanticipated economic hardship.**

2607.2 An applicant who has demonstrated the existence of economic hardship shall further demonstrate that the off-site development:

(a) Is located within the same census tract as the inclusionary development;

- **The Off-Site IZ Units are not located in the same census tract. However, both sites are located in Ward 5 and are approximately 1.0 mile walking distance apart. This requirement can be waived by the Board pursuant to §2607.3.**

(b) Consists of new construction for which no certificate of occupancy has been issued;

- **Yes.**

(c) Is at a location suitable for residential development;

- **Both properties are surrounded by existing residential properties. The 12th Street Project is a suitable location for infill residential development.**

(d) Has complied with or will comply with all on-site requirements of this Chapter as are applicable to it;

- **The 12th Street Project will have only eight (8) dwelling units and is not subject to any IZ requirement.**

(e) Has not received any development subsidies from federal or District government programs established to provide affordable housing;

- **None, including bonus density available at the original property.**

(f) Will provide inclusionary units comparable in type to the market-rate units being created in their place, with gross floor areas of not less than 95% of the gross floor area of such market-rate units, and of a number no fewer than the number of units that would otherwise have been required on-site;

- **The Inclusionary Units will be slightly larger than the market rate units.**

(g) Will not have more than 30% of its gross floor area occupied by inclusionary units that satisfy the set-aside requirement of other properties, including the property that is the subject of the BZA application; and

- **Approximately twenty-five percent of the 12th Street Project will be used to provide the Off-Site IZ Units.**

(h) Has not utilized bonus density beyond that provided by § 2604.1.

- **No bonus density is available or utilized by the 12th Street Project.**

2607.3 The requirement of § 2607.2 (a) may be waived upon a showing that the off-site development is owned by the Applicant, is located in the District of Columbia, and meets the requirements of § 2607.2.

- **Waiver requested.**

2607.4 Inclusionary units constructed off-site shall not be counted toward any set-aside requirement separately applicable to the off-site development pursuant to § 2603.

- **There is no IZ requirement for the 12th Street Project.**

2607.5 No order granting off-site compliance shall become effective until a covenant, found legally sufficient by the Office of the Attorney General, has been recorded in the land records of the District of Columbia between the owner of the off-site development and the Mayor. A draft covenant, executed by the owner of the offsite property, shall be attached to an application for relief under this section.

- **Draft Covenant for the Off-Site IZ Units to be provided upon approval by Board in accordance with the requirements of §2706.6 and 2706.7.**

2607.8 No application for a certificate of occupancy for a market-rate unit on the inclusionary development shall be granted unless construction of the off-site inclusionary units is progressing at a rate roughly proportional to the construction of the on-site market-rate units.

- **The 12th Street Project is under building permit review. A permit is expected by September 1 and construction would begin by October 1. Substantial completion is expected by April-May, 2017.**

- **The Zoning Administrator has approved a Certificate of Inclusionary Zoning Compliance for 2124-A Third Street, NE (50% AMI) and 2124-B Third Street, NE (80% AMI) with a combined IZ square footage of 2,850.01square fee which exceeds the applicable IZ requirement of 2,467.82 square feet by 382.19 square feet. Exhibit F (CIZC Certificate).**

- **No Certificate of Occupancy shall be approved for 2124-A and 2124-B Third Street, NE until the Off-Site IZ Units are completed and have established compliance with the applicable IZ requirements. After BZA approval for the use of the Off-Site IZ Units, the Applicant will be entitled to complete construction of the units at Lots 42 and 44 (2122 and 2126 3rd Street, N.E.) and obtain certificates of occupancy for those units.**

III. NEIGHBOR OUTREACH

The Applicant, through counsel, has attempted to contact the adjacent neighbors at 2110 3rd Street, N.E., Messrs. Boyer and Holcomb, to identify and resolve any outstanding issues. Mr. Boyer was hospitalized indefinitely and unable to respond. Mr. Holcomb did not respond.

Thank you for your assistance.

GREENSTEIN DELORME & LUCHS, P.C.

____
John Patrick Brown, Jr.

Enclosures: Exhibits A to F

By Electronic Mail

cc: Teri Janine Quinn, Chair, ANC 5E (5E06@anc.dc.gov)
Renee T. Lewis, ANC 5E03 (5E03@anc.dc.gov)
Ms. Megan Rappolt, Office of Planning (megan.rappolt@dc.gov)
Ms. Evelyn Israel, DDOT (evelyn.israel@dc.gov)
The Kady Group, Inc., Applicant

Exhibit A

B1309366

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., May 9, 2013

Plat for Building Permit of: SQUARE 3561 LOTS 42 - 49

Scale: 1 inch = 20 feet Recorded in Book 207 Page 102

Receipt No. 13-04269

Furnished to: OUSMANE BA

Surveyor, D.C.

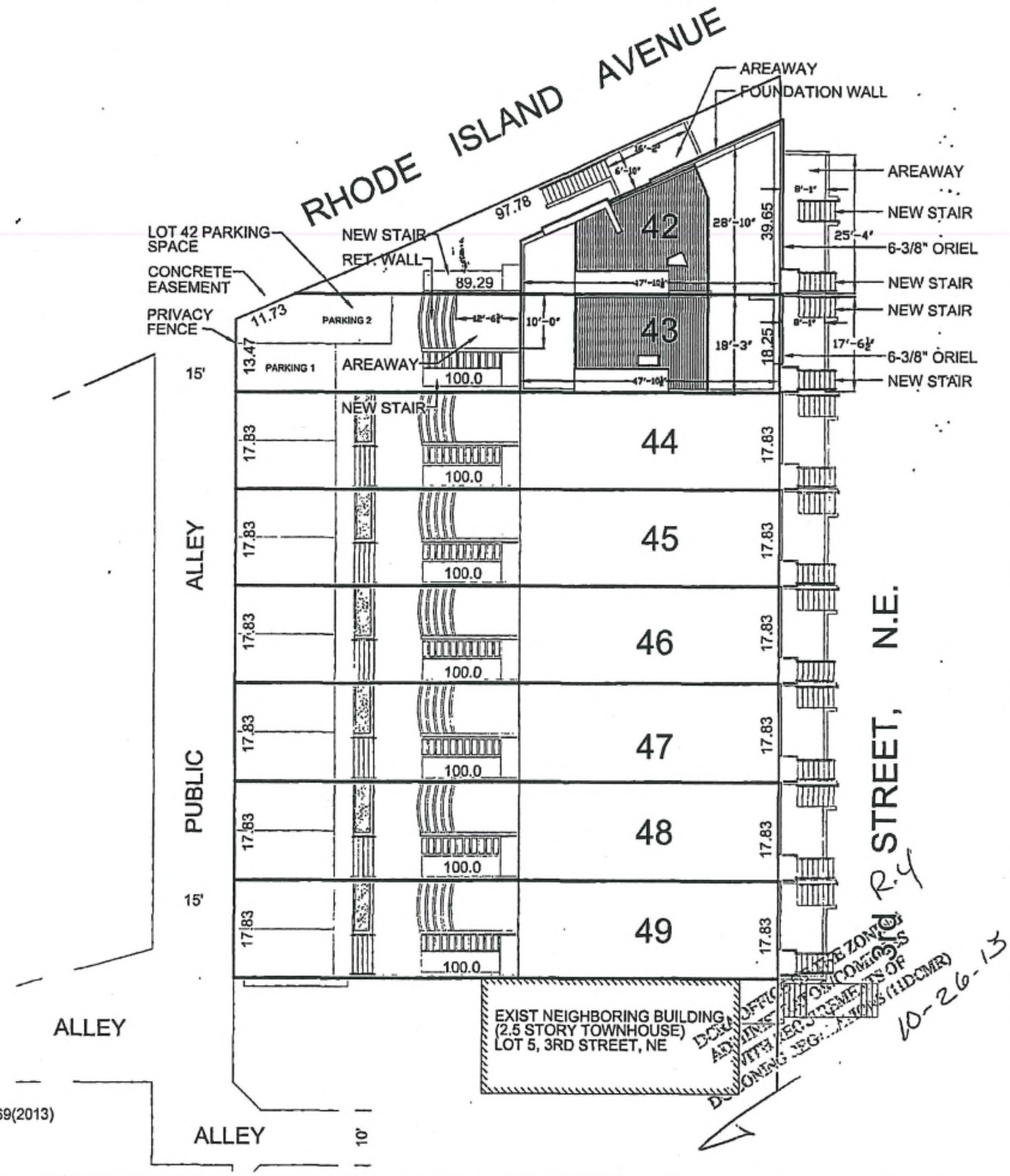
By: A.S.

I hereby certify that all existing improvements shown thereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining Lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified that all Lot divisions or combinations pending at the Office of Tax & Revenue are correctly depicted, and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and private restricted property.) Owner/Agent shall indemnify, defend, and hold the District, its officers,employees and agents harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and directly or indirectly caused by any acts done thereon or any acts or omissions of Owner/Agent; provided however, that the foregoing indemnity shall not apply to any losses, costs, claims,damages,liabilities,and causes of action due solely to the gross negligence or willful misconduct of District or its officers, employees or agents.

Date: 10/28/2013

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



SR-13-04269(2013)
* E-MAIL

Exhibit B

EXHIBIT 11

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR

November 10, 2014

Olusola Sulekoiki
Kessington Place L.L.C.
9324 Annapolis Road
Lanham, MD 20706

RE: Application of Inclusionary Zoning to 2112-2126 3rd Street NE

Dear Mr. Sulekoiki:

It has come to our attention that a multi-dwelling development of flats located at 2112 – 2126 3rd Street NE is subject to the Inclusionary Zoning (IZ) regulations pursuant to 11 DCMR Chapter 26. More specifically, § 2602.1 provides that IZ applies to developments of 10 or more dwelling units which are:

> "New one-family dwellings, row dwellings, or flats constructed concurrently or in phases on contiguous lots or lots divided by an alley, if such lots were under common ownership at the time of construction…" (Section 2602.1(c)(2)).

As such, please complete the attached Certificate of Inclusionary Zoning Compliance (CIZC) application and return it promptly to my office. If a CIZC has already been executed or the project is considered exempt from the IZ requirements, please submit any supportive documentation. In the meantime, no additional building permits or Certificates of Occupancy will be issued for this development until IZ compliance is addressed.

Sincerely, Matth Le Grant

Matthew Le Grant
Zoning Administrator

Attachments: CIZC Application

cc: Adeniyi Talabi (Agent for Owner)

Exhibit C

BOLAN SMART ASSOCIATES, INC.
1150 K STREET, NW, SUITE 1211, WASHINGTON, DC 20005 • (202) 371-1333

February 2016

2112-2126 3rd Street, NE
BZA Case #19101
IZ Economic Viability

Bolan Smart Associates has been asked to review the economic viability of providing two Inclusionary Zoning Set-Aside housing units for a largely already built 16-unit development project at 2112-2126 3rd Street, NE.

1. IZ Economic Feasibility under Bonus Density Provisions: The Applicant has represented that the subject project with IZ would have worked with bonus density. Bolan Smart has reviewed developer budget information and concurs with this finding. That said, Bolan Smart has not been tasked to consider how potential bonus density and IZ provisions may have otherwise applied to the subject project.

2. As Built Economic Feasibility: Bolan Smart has evaluated the Applicant provided February 2016 development budget information and finds the cost and revenue assumptions to be consistent with market norms for this type of project at this location. The combination of the land acquisition costs, hard and soft construction costs, and the cost of end unit sales are all reasonable. The evidence of recorded sales prices for finished units when measured against the total development cost including transaction expenses indicates the subject project falls in the middle range of generally required economic performance, producing approximately a 20% overall return-on-cost over a two to three year period.

3. DC Office of Planning Findings: Bolan Smart was asked also asked to consider the District of Columbia Office of Planning memorandum concerning this BZA case dated January 5, 2016. It is our understanding that the Office of Planning analysis was premised on Applicant estimated budget information current to spring 2015, that was then compared with actual recorded unit sales information from later in 2015. Bolan Smart highlights two observations from this memorandum:

   - On page 3, the OP report observes that the original provided Applicant budget information identified "positive net proceeds" from both the as conceived project without IZ provisions as well as other hypothetical scenarios, including IZ accommodations without the benefit of an added density bonus. The applicant does not refute this observation, which is also confirmed by Bolan Smart. What is in question, however, and is well stated in the OP report, is "does a certain amount of unrealized proceeds, due to the provision of IZ units, equate to a denial of economic viability..." The OP report does not attempt to address this question (nor does the OP report comment on the Applicant's summary of costs). Differentiating between "positive net proceeds" and "unrealized proceeds" is the critical question, which we attempt to dissect later herein.

- On page 4 of the OP report there is a table comparing the Applicant's earlier budget based projected unit sales prices with the actual generally higher recorded prices, computing a "Discrepancy Amount" as the delta between the two. (We note that OP took the lower of two sales price scenarios originally presented by the Applicant, not factoring for the alternate higher price scenario that was also submitted.) Based on employing the lower sales price assumption, the OP report suggests that "there is a discrepancy in the Applicant's favor". The OP report continues, however, to ask that the Applicant "provide an accurate cost-breakdown for BZA review". With the benefit now of the available actual cost expenditures, as presented by the Applicant elsewhere, the implied positive discrepancy from the realized unit sales prices is not in the Applicant's favor, but in fact presents some dilution in proportional proceeds. This is due to higher actual construction costs than represented in the spring 2015 budgets reviewed by OP, a higher cost function experienced industry-wide of recent. In addition, the subject project incurred an increase in the cost of construction financing consequent from 16 months of project delay attributed to the overlay of the IZ discussions. In sum, higher unit delivery costs have not been entirely offset by higher sales revenues.
    - Actual cost 6.0% higher than spring 2015 Budget
    - Actual revenues 3.7% higher than spring 2015 Budget

4. <u>Applicant Actual Costs and Revenues:</u> The following provides a simplified illustration of the Applicant's costs and revenues, plus the yield-on-cost (positive proceeds). The inputs are based on the Applicant's actual budget submitted under separate cover, and which Bolan Smart has previously stated as consistent with market norms:
    - Actual all-in delivery cost $300 / gsf
    - Actual revenues $360 / gsf @ 84.6% gsf to nsf @ $425 / nsf
    - Revenue over cost (positive proceeds) = $60 / gsf (yield = 20%) x 29,155 gsf = $1,750,000

5. <u>What constitutes economic viability?</u> The OP report references "positive net proceeds", assumed to mean project revenues exceeding project costs. It goes without saying that economic viability requires positive proceeds in order to attract investment and to offset development risks. A generally accepted understanding is that new development typical to that of the subject project has minimum investment thresholds of 20% to 25% positive proceeds over costs. This yield rate is spread over multiple years of development period, and compensates the developer investor for a number of opportunity costs. While this "return" is often referred to as profit, this can be misleading in that what it really represents is the minimum required payment to induce the investment. It represents the cost of capital, or even more simply put, cost of business, that if not recovered, means a project will go not go forward.

6. <u>What would constitute development feasibility economic loss?</u> The OP report poses the question of what "unrealized proceeds" may mean in denying economic feasibility. From the investor's perspective, any "positive proceeds" totaling less than 20% of project cost would deny economic feasibility.

7. <u>Actual cash loss?</u> Under the circumstances being considered in this BZA case, the Board may or may not agree on the applicability of investor based minimum proceeds. Then the question may become how much "unrealized proceeds" can the investor absorb before they are losing actual capital, having already forsaken any expected required minimum yield? In the case of the subject project, there are two development cost line components that need to be added if there is to be no "positive net proceeds" allowed as a definition of economic feasibility. The missing items are direct compensation for developer time and expense (i.e. 4.0% developer fee on project cost) and some lower threshold of compensation for investor equity, suggested as equivalent to the cost of debt as a minimum alternative opportunity cost to an otherwise required risk based higher yield threshold. The following computation illustrates what should be considered as required "positive proceeds" to cover base costs, or put another way, to not constitute and actual cash loss (or developer investor out of pocket subsidy):

   - Minimum developer fee @ 4.0% (not counted in budget): $350,000
   - Project yield as if debt @ 5.0% per year x 24 months = 10.0%: <u>$900,000</u>
   - Total minimum yield-on-cost (not cash loss / minimum positive proceeds): $1,250,000

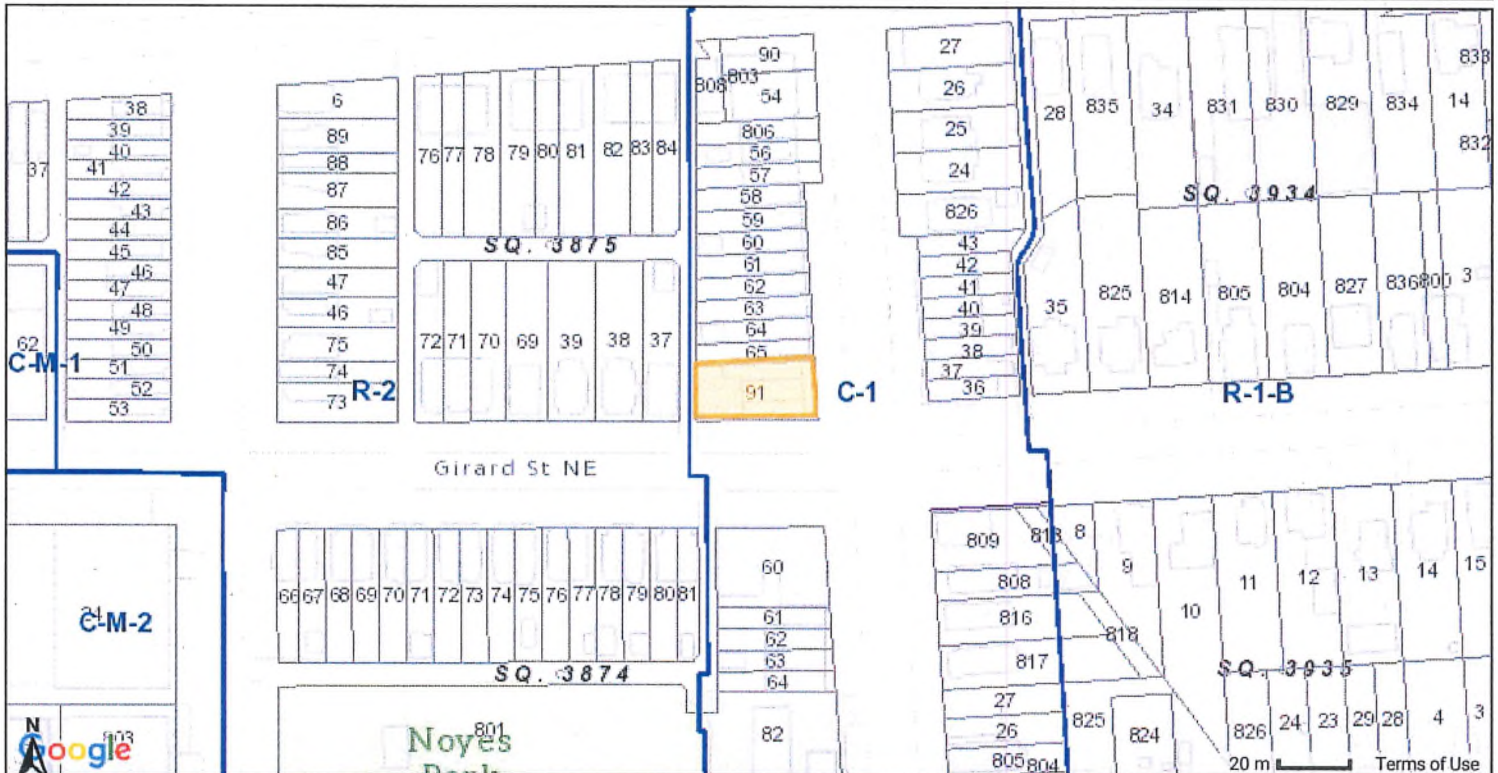
8. <u>IZ Implication:</u> The difference between investment viability at 20% yield ($1,750,000) and no actual cash loss ($1,250,000) = $500,000 (possible unrealized proceeds). This approximates one IZ unit @ 50% AMI valued in the range of $150,000 with an equivalent market value in the range of $650,000.

9. <u>Summary:</u> 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.

Exhibit D

Zoning Report for Square: 3875 Lot: 0091

June 16, 2016



Zoning Layers

Zone Districts | Pending Zones | Overlays | Pending Overlays | Baist Index | Historic Districts | Active PUDs | Pending | TDRs | Campus Plans | CEA

Latitude: NaN, Longitude: NaN

While DCOZ is committed to providing accurate and timely zoning information via the zoning map, DCOZ cannot guarantee the quality, content, accuracy,or completeness of the information, text, graphics, links, and other items contained therein. All data visualizations on the zoning map should be consideredapproximate. Information provided in the zoning map should not be used as a substitute for legal, accounting, real estate, business, tax, or otherprofessional advice. DCOZ assumes no liability for any errors, omissions, or inaccuracies in the information provided regardless of the cause of such orfor any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein. DCOZ retains the right tochange any content on its zoning map without prior notice.

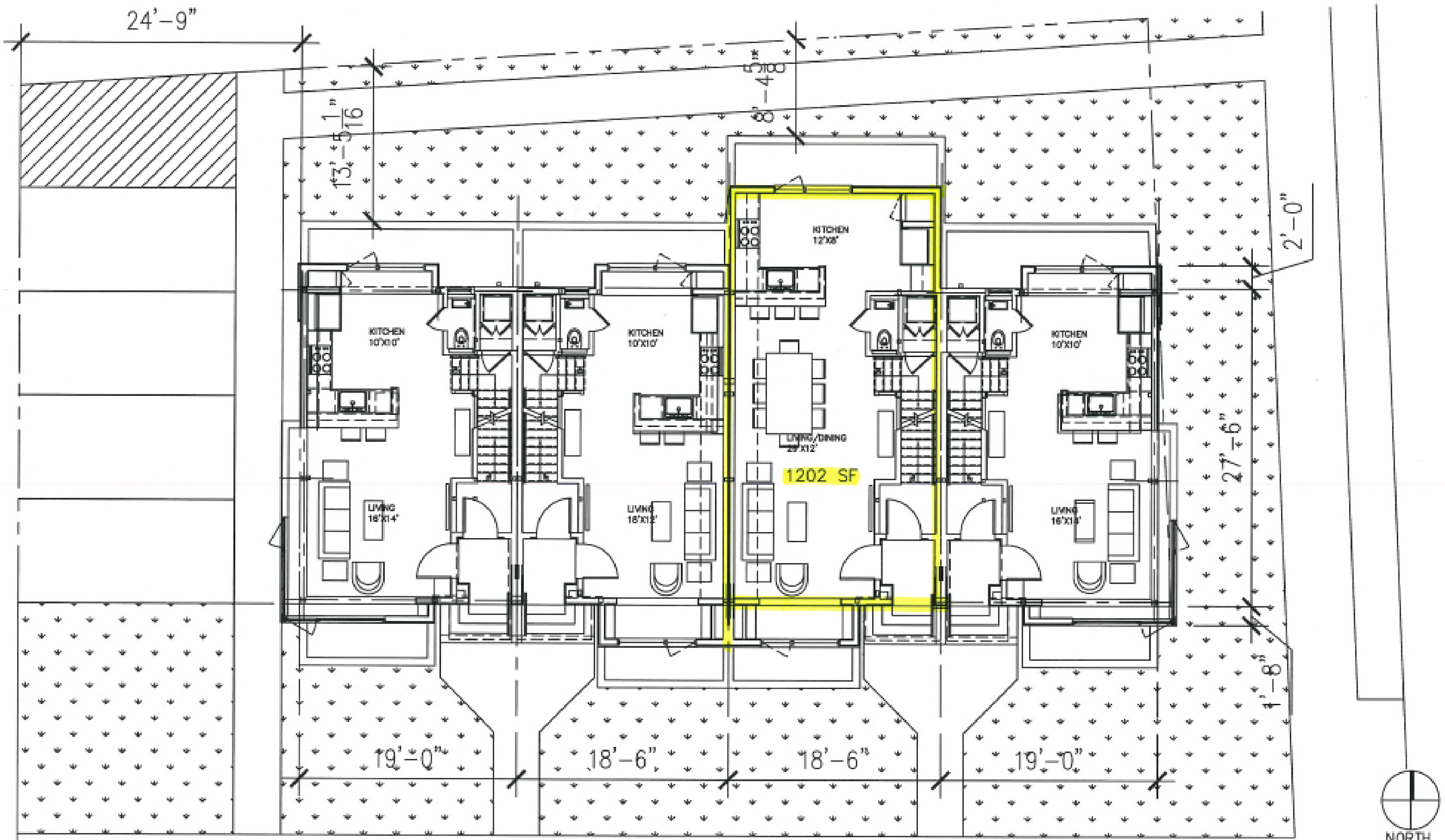
Zoning Data Summary*

Square/Suffix/Lot	3875 / n/a / 0091
Premises Address	2900 12TH ST NE
Zoning District(s)	C-1
Overlay District(s)	
Pending Zoning District(s)	
Pending Overlay District(s)	
PUDs	None
Pending PUDs	None
Ward	5
Council Member	Kenyan McDuffie
ANC	5B
ANC Chairperson	Ursula Higgins
SMD	5B04
Commissioner	Jose (Joe) L. Barrios, Jr.

* For a detailed explanation of zoning related terms, pleaserefer to the DC Zoning Map Glossary available at http://maps.dcoz.dc.gov/css/Map_App_User_Guide/Glossary.pdf.

** To the extent an active PUD exists on a particular site,the PUD zoning depicts the zoning in effect for that site.

Exhibit E



12TH & GIRARD STREET NE

FIRST LEVEL

SCALE: 1/8" = 1'-0"

KADY GROUP, INC.

DATE: 06/24/2016

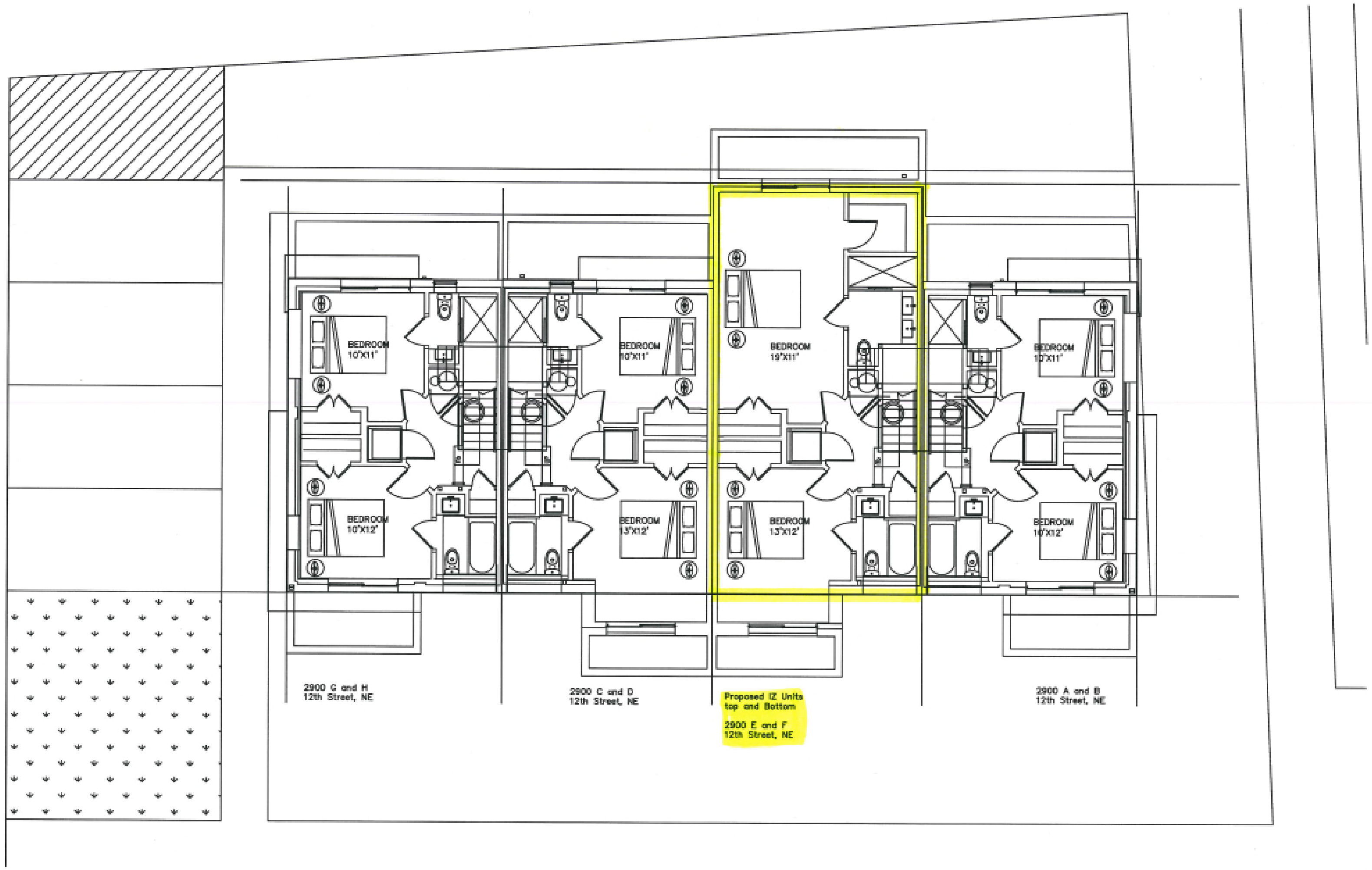

BEDROOM 10'X11'
BEDROOM 10'X12'
BEDROOM 10'X11'
BEDROOM 13'X12'
BEDROOM 19'X11'
BEDROOM 13'X12'
BEDROOM 10'X11'
BEDROOM 10'X12'
2900 G and H 12th Street, NE
2900 C and D 12th Street, NE
Proposed IZ Units top and Bottom
2900 E and F 12th Street, NE
2900 A and B 12th Street, NE

Exhibit F

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE (CIZC) APPLICATION

Consult the Instructions guide to complete this application

SECTION A - BUILDING PERMIT AND PROJECT INFORMATION (All information must match building permit application, where applicable)

1. Name of Inclusionary Development: Kensington Place Condominium Ph 1, 2, 3, & 4			2. Address(es) of Inclusionary Development: 2112, 2114, 2116, 2118, 2120, 2122, 2124, and 2126 3rd Street, NE DC	
3. Square/Suffix: 3561	4. Lot(s): 42, 43, 44, 45, 46, 47, 48, & 49	5. Ward: 5	6. Zoning District/Overlay District: R-4	7. Zoning Commission or BZA Order (if applicable): N/A
8. Building Permit Application B-1307456, & 57, B-1307393 & 94 — Date: 10/31/13 — Number: B-1307393 &				
9. Owner of Building or Property: Kessinton Place LLC	10. Owner Address (*include ZIP code*): 9324 Annapolis Road, Lanham, MD 20706		11. Owner Phone # & Email: 301-674-5197, darryls@kadygroup.com	
12. Agent for Owner: Darryl O.A. Sulekoiki	13. Agent Address (*include ZIP code*): P.O. Box 790, Lanham, MD 20703		14. Agent Phone # & Email: same as above	
15. Is the development exempt from IZ? ☐ Yes ☑ No	16. Primary Construction Method: ☐ Steel and/or Concrete ☑ Other (such as stick built)	17. Total Land Area of the Lot(s) of the Inclusionary Development: 14,270.8 sq. ft.	18. Total Gross Floor Area (all uses): 21,947.14 sq. ft.	19. Total Residential Gross Floor Area: 21,947.14 sq. ft.
20. Total Residential Floor Area located in: Cellar: 7207.98 sq. ft.; Enclosed public space projections: 475.82 sq. ft.	21. Total Residential Gross Floor Area + Total Residential Cellar and Projection Area (if applicable): 29630.94 sq. ft.	22. Total Net Residential Area: 24,678.15 sq. ft.	23. Ratio of Box 22 ÷ Box 21: 83.3%	24. Total Net Residential IZ Required: 2,467.8 sq. ft.

SECTION B – IZ UNIT CLASSIFICATION

	Unit or Dwelling Type	All Units (#)	Market Rate Units (# and % of total Market Rate Units)		IZ Units (# and % of total IZ units)		IZ Income Set-Aside (#)	
			#	%	#	%	50% of AMI	80% of AMI
Multiple Dwellings	Studio and 1-bedroom units		#:	%:	#:	%:		
Multiple Dwellings	2 or more bedroom units		#:	%:	#:	%:		
Multiple Dwellings	Total		#:	%:	#:	%:		
Single household dwellings and flats	Single household dwellings		#:	%:	#:	%:		
Single household dwellings and flats	Flats	16	#: 14	%: 100	#: 2	%: 100	1	1
Single household dwellings and flats	Total	16	#: 14	%: 100	#: 2	%: 100	1	1

SECTION C – IZ UNIT ITEMIZATION (If more than 10 units, continue unit information on a supplemental page)

No.	Inclusionary Unit Number, Dwelling Address, or Lot	Floor Number	Net Square Feet	Number of Bedrooms	Income Set-Aside 50% of AMI or 80% of AMI	Tenure (Sale/Rental)	Estimated Date of Availability	Right of Return (Y/N)	Off-site unit for another IZ Development? (Attach BZA Order)
1.	2124-A, 3rd Street, NE DC	lower level	1402.75	4	50%	rental	September 2015	N	N/A
2.	2124-B, 3rd Street, NE DC	upper Level	1455.26	4	80%	rental	September 2015	N	N/A
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									

Total Net Residential IZ Proposed: 2858.01 sq. ft.

(rev. 12/18/14)

SECTION D – OTHER REQUIREMENTS			
1. Do the bedrooms meet the definition provided in 14 DCMR § 2299.1? ☑ Yes ☐ No	2. Will the construction be phased? ☑ Yes (attach a phasing plan) ☐ No	3. Review Section G and check the box to acknowledge that necessary information and materials for the *Information* and *Analysis* checklists have been provided: ☒	

SECTION E - PROJECT ARCHITECT'S OR PROJECT ENGINEER'S INCLUSIONARY UNIT CERTIFICATION			
1. Name: Denababa Engineering Consultant, LLC	2. D.C. Lic. No. PE904446	3. Address: (*include ZIP code*) 11803 Edmond Woods Way, Bowie MD 20721	4. Phone # and Email 301-996-8584

I certify to the best of my knowledge that the size of each Inclusionary Unit is at least ninety-eight percent (98%) of the average size of the same type of Market Rate unit in the Inclusionary Development, or at least ninety-eight percent (98%) of the size indicated on the table found in 14 DCMR Chapter 22 Inclusionary Zoning Implementation §2202.4(f).

Signature of Project Architect/Engineer: Kemmart Denababa Date: 3/6/2015

SECTION F - APPLICANT'S SIGNATURES

Owner: I hereby certify that I am the owner of the property, that the application and plans are complete and correct to the best of my knowledge, that if a permit (or permits) is issued, construction will conform to the D.C. construction codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature: [signature] Address: 9324 Annapolis Road, Lanham MD 20706 Date: 3-4-2015

Agent: I hereby certify that I have the authority of the owner to make this application. I declare that the application and plans are complete and correct to the best of my knowledge, that if a permit (or permits) is issued, construction will conform to the D.C. construction codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature:________ Address:________ Date:________

SECTION G - ZONING ADMINISTRATOR CHECKLIST
OFFICIAL USE ONLY

	Yes	No	N/A	Comments
***Information*: Is the application complete?**				
1. Does CIZC information match the building permit application?	1. ☒	1. ☐	1. ☐	
2. Floor plans and elevations (with IZ units identified in the floor plans)	2. ☒	2. ☐	2. ☐	
3. DC surveyor's plat	3. ☒	3. ☐	3. ☐	
4. Copy of draft Inclusionary Development Covenant	4. ☒	4. ☐	4. ☐	
5. Schedule of interior finishes, fixtures, equipment, and appliances comparing market rate and IZ units	5. ☒	5. ☐	5. ☐	
6. Copy of phased development plan	6. ☐	6. ☐	6. ☒	
7. Copy of Board of Zoning Adjustment or Zoning Commission Order	7. ☐	7. ☐	7. ☒	
8. DHCD letter of exemption from IZ	8. ☒	8. ☐	8. ☐	
9. $250 application fee (made out to DC Treasurer)	9. ☒	9. ☐	9. ☐	
10. Are all signatures present?	10. ☒	10. ☐	10. ☐	
***Analysis*: Does the application demonstrate compliance?**				
1. Is the net square footage of the Inclusionary Units sufficient?	1. ☒	1. ☐	1. ☐	
2. Are the exterior design, materials and finishes of the Inclusionary Units comparable to the market rate units?	2. ☒	2. ☐	2. ☐	
3. Are interior finishes and appliances of the Inclusionary Units comparable to market rate units?	3. ☒	3. ☐	3. ☐	
4. Are the Inclusionary Units of the appropriate minimum size?	4. ☒	4. ☐	4. ☐	
5. Is the proportion of Inclusionary studio and 1-bedroom Units less than the proportion of market rate studio and 1-bedroom units?	5. ☒	5. ☐	5. ☐	
6. Are Inclusionary Units overly concentrated on any floor?	6. ☐	6. ☒	6. ☐	
7. Are Inclusionary Units split appropriately between 50% and 80% of AMI?	7. ☒	7. ☐	7. ☐	
8. Will the Inclusionary Units be constructed at a proportional rate to the market rate units?	8. ☒	8. ☐	8. ☐	
9. Are any Inclusionary Units located off-site?	9. ☐	9. ☒	9. ☐	

ZONING ADMINISTRATOR – This certifies that the Certificate of Inclusionary Zoning Compliance is hereby: ☒ Approved ☐ Denied due to the items checked above.

Signed: Matthew Le Grant Date: 8-12-15