



BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD

THIS FORM IS FOR NON-PARTIES ONLY. IF YOU ARE A PARTY PLEASE FILE A FORM 150 – MOTION.

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.: 19187

I, Cheryl D. Stein hereby request the following relief:

- ☐ Accept an untimely filing of _____
- ☒ To reopen the record to accept Comment on Lack of Enumerated Conditions in Applicant's Draft Order (Exhibit 37).

Points and Authorities:

Accept an untimely filing: Please state each and every reason you believe the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your request to accept an untimely filing, including relevant references to the Zoning Regulations or Map. If you require more space, please use a separate piece of paper.

Reopen the Record: Please state each and every reason you believe the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your request to reopen the record, including relevant references to the Zoning Regulations or Map. The document(s) that you are requesting the record to be reopened for, must be submitted separately from this form. No substantive information should be included on this form.

Pursuant to 11 DCMR 3100.5, I request that the Board reopen the record and add my comment regarding the lack of enumerated Conditions in the Applicant's proposed Draft Order.

The Applicant filed the Proposed Findings of Facts and Conclusions of Law ("Draft Order") as Exhibit 37 on March 29, 2016. By this date the record has already been closed. This request is not prejudicial to the Applicant since no new evidence is introduced and there is no intent to delay the decision. There is good cause since the Board will receive clarification on the list of Conditions that should have been enumerated in Applicant's proposed Draft Order.

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this application/petition is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both. (D.C. Official Code § 22 2405)

Date:	4/4/16	Signature:	<i>Cheryl D. Stein</i>
Name:	Cheryl D. Stein	E-Mail:	cheryl333@live.com
Address:	1201 4th Street, N.W., Washington, D.C. 20001		
Phone No(s):	202-388-4682	Fax No.:	

Board of Zoning Adjustment
District of Columbia
CASE NO.19187
EXHIBIT NO.37

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

Cheryl D. Stein
1201 4th Street, N.W.,
Washington, D.C. 20001
202-388-4682

April 1, 2016

Submitted via EMAIL

Marnique Heath, Chairperson
Board of Zoning Adjustment
441 4th St, NW, Suite 210S
Washington, DC 20001

RE: BZA #19187. Comment on the Lack of Explicitly Enumerated Conditions in the Applicant's Proposed Findings of Fact and Conclusions of Law.

Dear Members of the Board,

I write to express my serious concern about the lack of enumerated Conditions in the Applicant's Proposed Findings of Fact and Conclusions of Law (henceforth also referred to as "Draft Order") (Exhibit 37). The Draft Order reads, "Insert conditions, of those outlined above, that the Board may see fit to impose." My concern arises from the fact that I do not believe the Applicant has dealt with the residents in good faith nor made full disclosure of relevant facts to the Board.

I live across the street on the same block as the proposed development. I have kept up to date on this BZA case through the neighborhood listserv and also via frequent updates from my ANC representative Rachelle Nigro. I have also attended two community meetings organized by Ms. Nigro and the Applicant.

I believe that that omission of the list of conditions by the Applicant is strategic and reflects its lack of intention to follow through on promises made to the residents who live near the proposed site. Throughout the process there has been a gap between what the applicant promised verbally and what it has committed to in writing.¹ The "No RPP" agreement is a prime example of that lack of candor. The first problem is that the Applicant represents in the letter that accompanied the proposed order that it has an agreement with Sergei Mikhailov. That is not a fair representation of the facts. While Mr. Mikhailov has been the most active of the residents and

¹ Compare and contrast, Exhibit 27, Appendix A, Point #4, "Residential Parking Permit Restrictions" which is the applicant's initial version vs the final agreement available in Exhibit 27, pages 2-3. The former is completely unenforceable, whereas the latter is a standard language used in many BZA orders. The fact that the Applicant did not voluntarily propose this standard language makes me suspect of their true intentions.

has helped to organize communications, I had understood the Applicant to reach an agreement with our entire group. There are more than two dozen of us who have attended meetings and made our position clear. Applicant's attempt to represent the neighborhood consensus as the opinion of one man is an effort to downplay the extent of the concerns that almost all local residents feel.

Even more troubling is the fact that Applicant gives us oral assurances and then either ignores them or refuses to put them in writing. At the first meeting at Metropolitan Church, the people who attended were unanimous in their opposition to the number of units proposed by Applicant. One of the chief reasons for that opposition was the impact it would have on street parking. Very few of the residents have off-street parking, and finding a spot is increasingly difficult. In the evenings and all weekend long, I usually have to park two or three blocks away from my house. Adding another two or three dozen cars to the block would make the situation truly untenable. The problem is compounded by the fact that the line between Zones 2 and 6 run right along the block. Consequently, I cannot park anywhere to the east because that requires a different sticker.

After hearing several people saying that the parking problem alone would cause them to oppose the project, an attorney for Applicant stated that the problem could be resolved by denying RPP's to residents of the proposed structure. That certainly allayed some of my concerns. Yet, when we received a proposed plan from Applicant, that condition was missing – along with others. We went back to Applicant and said that the RPP exclusion would have to be made a covenant so that it would run with the land. The Applicant agreed to that condition and a few others. Yet they have omitted the RPP exclusion from the proposed order.

I have been an attorney for almost 40 years. My experience with Applicant and his attorneys has left me with the impression that they will say anything in order to secure agreement from the neighborhood, but will not follow through. I strongly oppose the current version of the proposed order submitted to the Board; and I know from numerous conversations with at least a dozen neighbors that they all oppose a 22-unit building with no RPP exclusion.

I urge the Board to include in its final order all conditions that Applicant agreed to in both of their Addendums to Prehearing Statement. In the first addendum (Exhibit 27), the Applicant reiterated its commitment to a No RPP condition. In the second addendum (Exhibit 34) Applicant agreed to additional conditions as the result of its negotiations with the neighbors, represented by Mr. Mikhailov. The conditions are listed below, along with references to relevant exhibits:

Voluntary Exclusion from RPP Eligibility

- 1) The Applicant/Condo Board shall include in its condominium documentation a provision that prohibits residents/owners from obtaining a Residential Parking Permit ("RPP") for the Property from the D.C. Department of Motor Vehicles ("DMV"), under penalty of fines(s) against the condominium unit owner. *Exhibit 37, Finding of Fact 20 (G)(i); See also Exhibit 27, page 2, Condition #1;*
- 2) The Applicant/Condo Board shall obtain written authorization from each owner, either through a deed provision or another written document that allows the DMV to release to the Applicant/Condo Board any and all records of that resident/owner requesting or receiving an RPP for the Property. *Exhibit 37, Finding of Fact 20 (G)(ii); See also Exhibit 27, page 2, Condition #2.*
- 3) The Applicant/Condo Board shall monitor resident/owner compliance with the RPP lease restriction by requesting from the DMV, every six months, any and all records of residents/owners requesting or receiving RPPs for the Subject Property, and shall provide annually to the Condominium Board the results of its inquiries. *Exhibit 37, Finding of Fact 20 (G) (iii). See also Exhibit 27, page 3, Condition #3.*
- 4) The Applicant/Condo Board shall record a covenant against the Property among the Land Records of the District of Columbia prohibiting any owner of the property from obtaining an RPP for the building approved in this BZA Order. *Exhibit 37, Finding of Fact 20 (G) (iv). See also Exhibit 27, page 3, Condition #4.*

Availability of Excess Parking Spaces to 200 Footers

- 5) 1212-1218 4th Street, LLC agrees to provide a minimum of twenty-seven (27) parking spaces as part of the redevelopment of the Properties. *Exhibit 37, Draft Order Page 2, Condition 1; See also Exhibit 34, Condition 1.*
- 6) 1212-1218 4th Street, LLC agrees to limit the number of spaces available to the residents leasing or owning the dwelling units on the Properties to one parking space per dwelling unit or not to exceed twenty-two (22) parking spaces being utilized by residents of the Property. *Exhibit 37, Draft Order Page 2, Condition 2; See also Exhibit 34, Condition 2.*
- 7) 1212-1218 4th Street, LLC agrees to make the parking spaces available to all property owners within two hundred feet (200 ft.) (hereinafter referred to as "200 Footers") as follows: Six (6) months after the issuance of a Certificate of Occupancy for the Properties or six (6) months after seventy-five percent (75%) of the dwelling units for the Properties

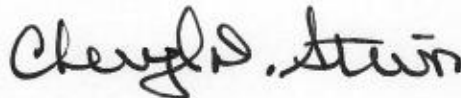
have been sold or leased, whichever date is later, notice shall be given to the 200 Footers stating that said 200 Footers shall have thirty (30) days from the date of the notice to send a letter of intent to purchase or lease the remaining parking spaces available after parking spaces have been offered to the residents owning or leasing unit at the Properties. The parking spaces shall be available to the 200 Footers for purchase or lease on a first-come, first-server basis. *Exhibit 37, Draft Order Page 2, Condition 3. See also Exhibit 34, Condition 3.*

- 8) The purchase price of parking spaces sold to the 200 Footers shall be at a 15% discount of Market Price: i.e. Market Price minus 15%. If spaces are rented, rental rate to the 200 Footers shall be at a 15% discount of Market Price. *Exhibit 37, Finding of Fact 20 (F). See also Exhibit 27, Exhibit A, Point #7 "Excess Parking for the Immediate Community".*

The above conditions are not prejudicial to the Applicant and do not run afoul of the zoning regulations. The Board should thus find them acceptable. If Applicant is not willing to have them included, after agreeing to them, then that should be a sign to the Board that it Applicant is not acting in good faith. In that event, I would urge the Board to deny any variance to Applicant.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Cheryl D. Stein". The signature is fluid and cursive, with the first name "Cheryl" being more prominent than the last name "Stein".

Cheryl D. Stein