BEFORE THE BOARD OF ZONING ADJUSTMENT

OF THE DISTRICT OF COLUMBIA

Appeal of
Rodut Associates of DC, LP

BZA Appeal No. 17430
Public Hearing: March 21, 2006
ANC 2F

APPELLANT'S CROSS MOTION FOR SUMMARY JUDGMENT BASED ON ADMISSIONS BY DCRA AND 1150 OWNER[1]

The Appellant, Rodut Associates of DC, LP, by and through undersigned counsel, respectfully submits this Cross Motion for Summary Judgment in support of its appeal of the Department of Consumer and Regulatory Affairs and/or Zoning Administrator's decision on July 5, 2005 to issue a new Certificate of Occupancy No. 100692 for a "Condominium 121 Units and Parking Garage" to 1150 Investors Inc. ("1150 K Owner")[2] at 1150 K Street, N.W. (Square 317, Lots 834, 836 (Part of Record Lot 25)) ("1150 K Property") in violation of the Zoning Regulations, 11 DCMR 3202.3 (February 2003).

Both the Department of Consumer and Regulatory Affairs ("DCRA") and 1150 Owner have gone to great lengths to vindicate themselves, but in doing so have clearly admitted that the Certificate of Occupancy issued was invalid on its face and not in compliance with the Zoning Regulations. Accordingly, the Board must summarily REVOKE Certificate of Occupancy No. 100692.

Based on these admissions, the relevant facts are undisputed, including:

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[1] The Motion to Dismiss filed by 1150 Investors, Inc. ("1150 Owner") on Friday, March 17, 2006, less than four (4) days before the hearing, was not timely. Under 11 DCMR 3106.2, the 1150 Owner was required to file its request for party status not less than fourteen (14) days before the hearing. It is significant that the 1150 Owner was engaged in appearances before ANC 2F on this appeal beginning in January 2006, but did not file its motion until after the prehearing deadline.

[2] Based on the Appellant's records, the property is owned by 1108 K Street, LLC, although the Certificate of Occupancy authorizes 1150 Investors Inc. to occupy the property.

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1. Construction of the 1150 K building was authorized by DCRA pursuant to Building Permit No. B452618 specifically for Lot 25 in Square 317. See 1150 Owner's Motion to Dismiss, p. 2 and Exhibit B.

2. "An above-grade connection was contemplated between the new apartment house construction and the existing improvements located on that portion of Lot 25 ground leased by Rodut (the "Rodut Improvements"). **Consistent with the plans approved as part of the building permit for the apartment house, an above-grade connection was constructed on the interior of the east elevation of the apartment house; however, no equivalent connection was made to the Rodut Improvements. As a result of the subdivision processes detailed below, the apartment house and the Rodut Improvements are no longer located on a single record lot, thus, an above-grade connection is inappropriate and would be violative of the Zoning Regulations.**" See 1150 Owner's Motion to Dismiss, p. 2 (emphasis added) (1150 Owner cannot have it both ways: obtain and benefit from a Certificate of Occupancy based specifically on Lot 25, but then claim reliance on Lot 25 would violate the Zoning Regulations and that reference to an entirely different Record Lot would magically cure or eliminate the violation.)

3. On January 24, 2005, the 1150 Owner eliminated Lot 25 and created Lot 26 which did not include the Appellant's 1108 K Street Building located on Part OF-25. See 1150 Owner's Motion to Dismiss p. 2 and Exhibit C (the Lot 26 Subdivision Plat was personally signed by Mr. Ronald E. Walton). See DCRA's Motion, p. 3 and Exhibit A.

4. On June 30, 2005, the 1150 Owner created Lot 27 which replaced Lot 26. See 1150 Owner's Motion to Dismiss p. 3 and Exhibit D.

5. On June 30, 2005, Owner (again signed personally by Mr. Walton) submitted a Certificate of Occupancy application for the 1150 K Street, N.W. building, specifically referencing Lot 25 in Square 317, although Mr. Walton, on behalf of the 1150 Owner, actually knew that Lot 25 no longer existed having signed both the Subdivision Plats for the creation of Lots 26 and 27. See Appellant's Prehearing Statement, Exhibit F (C of O Application) and 1150 Owner's Motion to Dismiss pp. 3, 6 (admitting "1150 K apartments are located on Lot 27").

6. On July 5, 2005, relying on the Owner's application for the 1150 K Street building on Lot 25 in Square 317, DCRA issued Certificate of Occupancy No. 100692, but Lot 25 did not exist and the apartment building was actually and admittedly located on Lot 27. Id.

Based on the undisputed facts, the following conclusions are also beyond dispute:

1. Certificate of Occupancy No. 100692 for Lot 25 violates 11 DCMR 3202.3 because admittedly the 1150 K and 1108 K Building are no longer located on a single lot of record; and

2. Certificate of Occupancy No. 100692 is invalid on its face and violates the Zoning Regulations because Lot 25 does not exist, although Lot 25 was the basis for issuing the occupancy permit.

In the interest of clarity and limited time to respond due to the 1150 Owner's late filing, the Appellant reserves its right to challenge any and all claims and/or defenses raised by DCRA and/or the 1150 Owner at the hearing.

For the foregoing reasons, the Board must summarily GRANT this appeal.

Respectfully submitted,

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/s/

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March 20, 2006

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March, 2006, the foregoing Appellant's Cross Motion for Summary Judgment Based on Admissions by DCRA and 1150 Owner was faxed to

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