

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

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Appeal of Van Ness South Tenants'
Association

Appeal No. 18151

POST-HEARING STATEMENT OF VAN NESS SOUTH TENANTS' ASSOCIATION

The Van Ness South Tenants' Association ("VNSTA" or "Appellant") respectfully submits this Post-Hearing Statement as permitted by the Board of Zoning Adjustment ("Board").

I. VNSTA NEEDS ONLY TO SHOW THAT THE CONTESTED UNITS ARE NOT "APARTMENTS" IN ORDER TO HAVE ITS APPEAL GRANTED.

The Appellee, District of Columbia Department of Regulatory and Consumer Affairs ("DCRA"), and the Intervenors, Smith Property Holdings Van Ness, LP ("Archstone") and the University of the District of Columbia ("UDC"), (all collectively referred to as the "Objectors"), argue that the 21 units in the Archstone Van Ness building covered by the building permit being appealed fall within the definition of "apartment" in the Zoning Regulations. The Objectors maintain that neither the conversion of these units to student use by the construction of walls nor the occupancy agreements signed by the students that vest total control of the units in UDC, not the student occupants, alter this "apartment" status. The Objectors further contend that the 21 units do not satisfy the requirements of either the definition of "dormitory" or the definition of "rooming house" in the Zoning Regulations.

To have this appeal granted, VNSTA merely needs to show that the usage of the 21 units after they were occupied by the UDC students no longer satisfies the definition of "apartment." If

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the Board agrees with this conclusion, it need look no further. The Objectors have offered no usage of these units that is lawfully allowed in an R-5 District other than “apartment” use. Thus, VNSTA does not need to convince the Board that the use after conversion is that of a “rooming house” or “dormitory” in order for this appeal to be granted.

II. THE OBJECTORS FAILED TO ADDUCE ANY EXPLANATION OF, OR MEANING FOR, THE PHRASE “EXCLUSIVELY FOR THE USE OF AND UNDER THE CONTROL OF THE OCCUPANTS OF THOSE ROOMS” IN THE DEFINITION OF “APARTMENT.”

The definition of the term “apartment” in the Zoning Regulations (11 DCMR § 199.1) is a mere 25 words long. The last 15 of those words are “exclusively for the use of and under the control of the occupants of those rooms.”¹ These 15 words representing 60% of the definition are the most important indicia of what constitutes an apartment. Yet the Objectors have failed to offer any meaningful substance to these words or explain their purpose.

The Occupancy Agreement that students must accept and sign expressly provides that UDC “reserves the right to authorize or deny unit/room or roommate changes and *reserves the right to require a student occupant to move from one unit to another during the year.*” Exhibit 6 at 1 (emphasis added). The Occupancy Agreement also does not give a student the right to select the unit in which he or she will live or choose the roommates with whom the student will share the unit. *Id.* The Objectors provided no explanation of how the rooms a student occupies can be *exclusively for his or her use* if UDC has the right to assign students to particular units, to assign

¹ The first ten words of the definition of “apartment” are “one (1) or more habitable rooms with kitchen and bathroom facilities.” The Objectors’ discussion of this definition stops at this point.

roommates to a student, to change the roommates who share his or her rooms, and even move a student to an entirely different unit.²

The UDC Campus Plan states that UDC “proactively manages the behavior of students living in these residential facilities” and “has placed resident advisors in the apartment building who live in the building . . . and, when necessary, enforce its code of conduct.” Exhibit 7 at 23. The Occupancy Agreement emphasizes the total control by UDC of the students and their rooms, enforced by the resident advisors, by asserting that “[o]ccupancy is a privilege and not a right” (Exhibit 6 at 1), and providing that “[f]ailure to comply with any University Rule or Regulation may lead to termination of your occupancy” (*Id.* at 4). Further proof of the lack of any student control over their rooms is the mandatory closing of the rooms over winter break (Exhibit 5) and UDC’s refusal to allow students to add furniture to what remained of their living rooms after construction of the walls. Testimony of Tashina Elliott at 6:43:52, and 6:48:03. Occupancy as a matter of right clearly evidences exclusive use and control of the space by the occupant. Occupancy as a matter of privilege reflects the lack of such exclusive use and control.

The Objectors failed to address the extensive evidence and testimony concerning the lack of exclusive use and control by the students of their rooms presented by VNSTA. They offered only one witness, Zoning Administrator Matthew LeGrant, to address this question. Chairperson Meredith Moldenhauer asked Mr. LeGrant what would be needed to show the lack of exclusive use and control of any of the rooms in the building otherwise qualifying as “apartments” to cause these

² Board Member Greg Selfridge asked if someone holds a lease on an apartment and then sublets it, does not the unit remain an apartment. Selfridge at 8:28:57. (At the time of this filing, the transcript of the hearing was not yet available. The hearing testimony is therefore referenced to the time shown on the On Demand Video for the BZA hearing on March 15, 2011, at <http://dcoz.dc.gov/services/OnDemandVideo.shtm>.) This analogy is inapposite. A subleasee would be able to choose the apartment sublet, any roommates who might live in apartment, and would have all the legal rights of a tenant, of which the students have none under the Occupancy Agreement.

rooms not to be “apartments.” Moldenhauer at 8:22:20. Mr. LeGrant did not respond directly to this simple question. LeGrant testimony at 8:22:54 – 8:24:35. Instead, he meandered into a discussion of what the key aspects of a “rooming house” were. He noted that the rooms in rooming houses often had keyed locks and stated that the primary characteristics of a rooming house were the physical facilities and the arrangement of individuals. Mr. LeGrant and the Objectors totally failed to offer any meaning for the words “exclusively for the use of and under the control of the occupants of those rooms” in the definition of the term “apartment.”

A proper regulatory interpretation gives meaning to all words in a regulation. It does not treat 60% of the words in a regulatory definition as mere verbiage. Having been presented with no explanation of how the phrase “exclusively for the use of and under the control of the occupants of those rooms” should be applied to the circumstances of this appeal or any rebuttal of the indicia Appellant presented as evidence of lack of exclusive use and control by the occupants, the Board should grant this appeal.

III. THE DEFINITIONS OF THE TERMS “ROOMING UNIT” AND “FAMILY” HAVE NO RELEVANCE TO THE QUESTION OF WHAT DISTINGUISHES A “ROOMING HOUSE” FROM AN “APARTMENT.”

A. “Rooming Unit.” Chairperson Moldenhauer, referring to 11 DCMR §330.6(d), asked Mr. LeGrant whether there could be a kitchen in an individual unit in a rooming house. Moldenhauer at 8:27:34. Mr. LeGrant responded “no,” relying upon the definition of “rooming unit.” LeGrant at 8:27:54. The term “rooming unit” is defined as follows in 11 DCMR § 199.1:

one (1) or more habitable rooms forming a single, habitable unit used or intended to be used for living or sleeping purposes; but not for the preparation or eating of meals. The term rooming unit shall not include a tenement or a bachelor apartment.

A “rooming unit” is a completely separate and distinct habitation from a “rooming house.”

“Rooming house” is defined as follows:

a building or part thereof that provides sleeping accommodations for three (3) or more persons who are not members of the immediate family of the resident operator or manager, and in which accommodations are not under the exclusive control of the occupants. A rooming house provides accommodations on a monthly or longer basis. The term “rooming house” shall not be interpreted to include an establishment known as, or defined in this title as, a hotel, motel, inn, bed and breakfast, private club, tourist home, guest home, or other transient accommodation (36 DCR 7627).

11 DCMR § 199.1. It is important to note that a “rooming house” is not defined as a collection of “rooming units,” and nowhere mentions the term “rooming unit.” Moreover, unlike the definition of “rooming unit” which expressly provides that the habitable unit is not used for the preparation or eating of meals, the definition of “rooming house” nowhere contains such limitation.

A “rooming house” may include rooms that provide cooking facilities as well as rooms that do not. This is clear from §330.6 (d) to which Chairperson Moldenhauer referred. Section 330.6 provides in part:

A rooming or boarding house shall be permitted as a matter of right in an R-4 District; provided:

* * *

- (d) Cooking facilities are not provided in any individual unit³; and
- (e) In a rooming house, no central dining or food preparation area is provided for guests.

If the definition of “rooming house” itself excluded any habitation with cooking facilities in an individual room or unit, or with a central dining or food preparation area, then paragraphs (d) and

³ The word “unit” as used in paragraph (d) cannot refer to a “rooming unit” because such an interpretation would create a redundancy. By definition, cooking facilities are not included in “rooming units.” The word “unit” in this context obviously is a synonym for the word “room.”

(e) would have no meaning and be mere surplusage. Such inclusion would not be allowed by the very definition of “rooming house.”

Proper statutory and regulatory interpretation attempts to give meaning to all words and not consider words extraneous or surplus. The exclusions set forth in paragraphs (d) and (e) that disqualify certain rooming houses from being allowed as a matter of right in an R-4 District do not alter the definition of “rooming house.” These exclusions confirm that “rooming houses” may contain cooking facilities in an individual room or unit. The purpose of the exclusion is to require rooming houses with features such as kitchens to obtain a special exception to be allowed in an R-4 District, while allowing “rooming houses” without such features to operate as a matter of right.

B. “Family”. Mr. LeGrant also testified that an important criterion for distinguishing between a “rooming house” and an “apartment” is if a group of individuals operates as a “family.” LeGrant at 8:23:45. The only use of the term “family” as defined at 11 DCMR § 199.1, in the definition of “rooming house” is the requirement that the persons occupying the sleeping accommodations not be “members of the immediate family of the resident operator or manager.” The concern here is with the family of the resident manager, not whether a family relationship may exist among a group of individuals in a rooming house separate and apart from the resident manager.

Mr. LeGrant is apparently referring to the part of the definition of “family” which includes unrelated individuals “living together as a single housekeeping unit, using certain rooms and housekeeping facilities in common.” As discussed above, the definition of “rooming house” includes rooms with kitchen facilities. Thus, individuals living in both “apartments” and

“rooming houses” could fall within this definition of “family.” This definition therefore offers no basis for distinguishing between a “rooming house” and an “apartment.”

IV. THE CHARACTERISTICS OF A “ROOMING HOUSE” IDENTIFIED BY MR. LEGRANT AND THE OBJECTORS DESCRIBE THE CHARACTERISTICS OF THE UDC STUDENT ROOMS IN ARCHSTONE VAN NESS.

In response to a question from Chairperson Molderhauer about whether there could be “apartments” and a “rooming house” in the same building, Mr. LeGrant answered “yes.”

Testimony at 8:24:37. This is the situation in Archstone Van Ness. Mr. LeGrant also identified many characteristics of a rooming house that are shared by the UDC student units at Archstone Van Ness. For example:

- Mr. LeGrant described rooming houses as having locked doors to their rooms. LeGrant at 8:22:56. All 21 units occupied by UDC students have locked doors.
- Mr. LeGrant further testified that a rooming house may have 16 rooms and a common area such as a living room. *Id.* 8:04:01. There are 21 rooms occupied by the UDC students. Because the living rooms in the units occupied by the students have essentially been eliminated, the students use the lobby of the building, the business center, and the hallways as their living rooms and common areas.
- Finally, Mr. LeGrant stated that the resident manager mentioned in the definition of “rooming house” would be someone living within the rooming house itself. *Id.* 8:11:20. He could not explain why the UDC’s resident assistants who also live within the Archstone Van Ness building where the 21 student units are located would not be functionally the same as the resident manager of a “rooming house.”

V. THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT ANY SUPPOSITIONS ABOUT WHAT OTHER CIRCUMSTANCES MAY OR MAY NOT CAUSE A HABITATION TO BE AN “APARTMENT.”

Members of the Board and the Objectors speculated about situations that might be alleged to cause what had been an “apartment” to no longer meet the definition of an “apartment.” These discussions questioned differences that might exist between leases and occupancy agreements, the categorization of units rented by corporations for the benefit of their employees, and the effect of guests of tenants living in apartment buildings. However, there was never any evidentiary predicate for any of these conjectures. There were no facts presented to establish a comparable situation that might be relevant. Moreover, no hypothetical situation was described in sufficient detail to allow an objective analysis and to show relevance to the issues in this appeal. Such speculation should therefore play no role in this appeal.

VI. INTERPRETING THE UDC UNITS TO BE “APARTMENTS” WOULD BE CONTRARY TO THE PURPOSE AND INTENT OF THE ZONING REGULATIONS.

Section 101.1 of the Zoning Regulations provides that “[i]n their interpretation and application, the provisions of this title shall be held to the minimum requirements adopted for the promotion of the public . . . convenience, order . . . and general welfare” The use of the Archstone Van Ness building for both rental apartment use and dorm-like use is contrary to the intent of the Zoning Regulations because these uses are simply incompatible. VNSTA’s witnesses Tashina Elliott, Karen Perry, and Brian Lederer all testified about how the mixture of the living conditions of apartment tenants and students operating as if in a dormitory do not serve the public convenience, order, or general welfare. VNSTA has no objection to students living in dormitories; provided that the dormitories are not situated within a building next door to tenants who thought they were renting units in a residential apartment building. To change the rules of

the game on tenants who may have lived in this apartment building for 30 years or more offends the sense of order that the Zoning Regulations were designed to promote.

In addition, in the Rental Housing Act of 1985, the Council of the District of Columbia finds that:

(1) There is a severe shortage of rental housing available to citizens of the District of Columbia (“District”).

(2) The shortage is growing due to the withdrawal of housing units from the housing market . . .

(3) The shortage of housing is felt most acutely among low-and moderate-income renters, who are finding a shrinking pool of available dwellings.

* * *

(11) This extension of the Rent Stabilization Program is required to preserve the public peace, health, safety, and general welfare.

District Code § 42-3501.01.

In enacting the Rental Housing Act, the District Council also supports the statutory purpose “[t]o protect the existing supply of rental housing from conversion to other uses.”

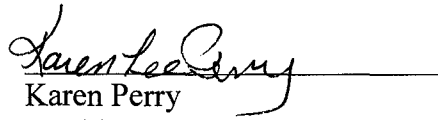
District Code § 42-3501.02 (4). Presumably, the general welfares being preserved and promoted both by the Zoning Regulations and by the District Council are not in conflict and have consistent objectives. Archstone Van Ness is subject to the Rent Stabilization Program and, accordingly, is a source of affordable housing to moderate-income renters. Allowing UDC to withdraw 21 units from the Rent Stabilization Program and from availability as a source of affordable housing to moderate-income citizens of the District and to convert them to dorm-like use for students who are likely not to be citizens of the District, does not serve the general welfare of the District of Columbia. This Board should not countenance such conversion.

VII. OUTLINES OF OPENING STATEMENTS.

For the convenience of the Board, attached hereto are the outlines of the opening statements delivered by Karen Perry and David Wilson.

For all the reasons cited herein, this appeal should be granted, the building permit found to have been unlawfully issued, and the walls constructed ordered to be removed.

Respectfully submitted,



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March 28, 2011

ATTACHMENTS

OPENING STATEMENT OF KAREN PERRY

Before the Board of Zoning Adjustment

Tuesday, March 15, 2011

BZA APPEAL #18151

Van Ness South Tenants' Association, Inc.

A. INTRODUCTION:

1. President of VNSTA and ANC 3F02 Commissioner
2. Appeal brought by VNSTA on behalf of residents of Archstone Van Ness
3. Summary of appeal

a. This is an appeal of the building permit granted by DCRA to allow the construction of 21 walls in 21 one-bedroom units to permit 4 UDC students to be crammed into each unit. But, it should be noted that UDC has obtained more permits and they now have 31 units. At the City Council last week they stated they intended to have 100 units or 400 students in the building.

b. The building permit violates Zoning laws in several respects:

- i. It was granted for an impermissible use – to convert these “apartments” into “rooming houses” that are not allowed in an R-5 district.
- ii. It was granted without prior review by the ANC, which is legally required to consider whether the intended use is legally allowable. I will address later.
- iii. It was granted without sufficient information in the application to allow a determination of compliance with the Zoning Regulations.

- iv. It was granted without DCRA's consideration of its compliance with the Zoning laws.
- v. The fact that DCRA had to issue a stop work order and that the construction was being done by UDC, not the owner of the building, should have sent up a red flag that more information was necessary before granting the permit.

B. GENERAL BACKGROUND

1. The Van Ness complex was constructed before 1970 as luxury residential housing. It consisted of 3 buildings: Van Ness North, now a cooperative, Van Ness East, now a condominium, and Van Ness South which has two wings, South and West, connected by a central lobby and reception area. All of the buildings are connected to each other via underground garages and to the Giant plaza. We all share the swimming pool.

2. Van Ness South maintained its rental status and is subject to the Rent Control Laws of the District. We are currently owned by the Archstone Group. Although we are listed in the Best Addresses of Washington book as Van Ness South, hence the Van Ness South Tenants' Association, recently Archstone changed our name to Archstone Van Ness. Our Tenants' Association was incorporated in 1979 and we have maintained our Certificate of Good Standing.

3. We are an eleven-story building with 625 units. Amenities for tenants include a business center, an exercise room, a social room, and the shared swimming pool. There is a wide variety of tenants including elderly and disabled tenants; working couples with small children; students at Howard Law School and other local universities; and diplomats whose embassies are located close by.

C. BACKGROUND OF CONTESTED BUILDING PERMIT.

1 At 9:00 a.m. on August 11, 2010, inspectors from the DCRA issued a notice of infraction to UDC for construction occurring at Archstone Van Ness without a building permit. At 4:30 p.m. on that same day, UDC was issued a second notice of infraction with another fine of \$2,000 for unlawfully continuing work with a stop work order in place. **Notices of Infraction, Exhibit 1.**

2. Two days later, on August 13, 2010, “Archstone/UDC” filed an application for a construction permit. **Application, Exhibit 2.** The agent for owner was listed as Eric Matthews, a contractor employed by UDC. The description of the work was “adding 21 walls to 21 apartment rooms.”

3. The Application has numerous defects:

- **The owner of the building is shown as Archstone/UDC. No such entity exists and UDC has no ownership interest in 3003 Van Ness Street, N.W.**
- The building is shown as 12 stories with 100 apartments on each floor. The building is 11 stories and there are 33 apartments on each floor on the west side and 25 apartments on each floor on the south side.
- Part of the building permit application is a zoning form. None was filled out and none was submitted, nor did anyone from Zoning sign off on the building permit application.
- Structural Engineering signed off on the application even though they did not know what units construction was to take place in, no construction drawings were submitted, and the building has over 15 different floor plans.

- The Application was signed by Eric Matthews. Eric Matthews was the agent hired by UDC. He is not the owner or agent of the owner Archstone. Nor is he an approved Archstone Vendor. Archstone has approved vendors in various disciplines that they must work with, down to the fact that all paint must be Glidden.
- The building permit issued did not identify the units where 21 walls were to be added to convert those units from one bedroom apartments to two bedroom apartments.
- Because the Environmental Questionnaire part of the building permit application was not filled out accurately in that the applicant checked that the building was not built before 1978, no Lead Hazard Control Questionnaire was filled out to determine if a permit was needed to conduct Lead Abatement, a serious safety and health concern for all residents. The Property was built before 1970 as our first residents moved in in 1970. In fact UDC has notified that their students that the building does contain lead.

4. Amazingly, less than two days after DCRA issued the stop work order, an expedited hearing was held, and DCRA issued the building permit that same afternoon.

Building Permit, Exhibit 3.

5. The building permit had further defects:
- The building permit did not identify the units where 21 walls were to be added to convert those units from one bedroom apartments to two bedroom apartments. And, it should be noted here that 42 walls were actually added and 21 doors. Ventilation was also added.

- The owner of the Property is also misidentified as Smith Property Holdings 4411 Connecticut Avenue, rather than Smith Property Holdings Van Ness LP. Smith Property Holdings 4411 Connecticut Avenue is the Park Connecticut, an entirely different building.

All of these defects are more than just administrative error. It is an entirely false application for a building permit and tend to obscure the impact on the zoning regulations.

D. THE BUILDING PERMIT VIOLATES THE ZONING REGULATIONS AND OTHER LAWS ESSENTIAL TO MAINTAINING THE INTEGRITY OF THE ZONING LAWS.

1. Section 3202.2 of the Zoning Regulations recognizes that each application for a building permit must be accompanied by sufficient information to allow a determination of compliance with the Zoning Regulations. The application submitted for the Building Permit does not do so. The application provides no notice of the intent to change the use of the units in which walls were to be constructed from “apartment” to “rooming house” use.

2. The DCRA then failed to consider compliance with the Zoning Regulations by rushing the permit through without having Zoning sign off on the permit.

3. These defects may have been caught had UDC notified ANC3F and the Ward Councilmember as required prior to the issuance of the Building Permit that UDC had leased property at Archstone Van Ness. DC Code § 1-309.10(b) requires that:

Thirty days written notice . . . of such District government actions or proposed actions, including (1) the intent to acquire an interest in real property, either through purchase or lease or (2) the intent to change the use of property owned or leased by or on behalf of the government, shall be given by first-class mail to the Office of Advisory Neighborhood Commissions, each affected Commission, the Commissioner representing a single-member district affected by said actions, and to each affected Ward Councilmember . . .

4. The DCRA also violated DC Code § 6-641.09(b) which further specifies that:

A building permit shall not be issued to or on behalf of the District government unless proper notice has been given under § 1-309.10. The Department of Consumer and Regulatory Affairs shall issue a cease and desist order to enjoin any construction project that is issued in noncompliance with this section.

5. ANC review of District government actions is an essential component of the enforcement of the Zoning Laws and maintaining the integrity of the zoning system. UDC's leasing of units at Archstone Van Ness and then converting them into rooming house use which is not allowed in the R-5 District in which Archstone Van Ness is located might have been avoided had the legally required review procedures been followed.

6. David Wilson will now address how the building permit violates 11 DCMR § 3202.1 because it changes the use of the property in violation of the Zoning Regulations.

OPENING STATEMENT OF DAVID G. WILSON

I. INTRODUCTION

A. I have lived at Archstone Van Ness for over 8 years.

B. I am a member of the VNSTA.

II. THE BUILDING PERMIT VIOLATES 11 DCMR § 3202.1 BECAUSE IT CHANGES THE USE OF THE PROPERTY FROM APARTMENT TO ROOMING HOUSE IN VIOLATION OF THE ZONING REGULATIONS.

A. Section 3202.1 of the Zoning Regulations provides that “a building permit shall not be issued for the proposed erection, construction, conversion, or alteration of any structure unless that structure complies with the provisions of this title.” The building permit that allows the construction of interior walls to subdivide one-bedroom apartments into two-bedroom apartments capable of accommodating four UDC students fundamentally and unlawfully changes the use of the rental units involved and violates the Zoning Regulations.

B. The Converted Units are not “Apartments” as defined in the Zoning Regulations.

1. The term “Apartment” is defined at 11 DCRM §199.1 as follows:

Apartment – one (1) or more habitable rooms with kitchen and bathroom facilities *exclusively for the use of and under the control of the occupants of those rooms.*

2. The UDC student occupants of the converted units are not tenants and, unlike tenants, do not have exclusive use and control of the rooms that they occupy.

a. The Office of Residence Life at UDC administers the off-campus student housing at Archstone Van Ness. It charges students \$8,400 per academic year for units housing four students. These units include for each student a bed, a dresser, desk and chair provided by UDC. **Office of Residence Life, Facility Information, Exhibit 4.**

b. The Office of Residence Life closes the off-campus housing during winter break. **Office of Residence Life, Important Dates, Exhibit 5.** This hardly suggests that the units are “exclusively for the use and under the control of the occupants of those rooms.”

c. The Terms and Conditions of Occupancy Agreement for Off-Campus Housing, which the student occupants must sign, expressly provide that “**Occupancy** is a privilege and not a right.” **Occupancy Agreement at 1, Exhibit 6.** A tenant has clear legal rights of exclusive use and control of a rental unit pursuant to a lease signed with a landlord. The UDC students occupying units at Archstone Van Ness have never signed leases with Archstone Van Ness or UDC, and accordingly have no such legal rights of exclusive use and control.

d. The students’ occupancy of the 21 units is solely at the sufferance of UDC. The Occupancy Agreement provides that “[t]he Director of Residence Life or the Vice President of Student Affairs reserves the right to authorize or deny unit/room or roommate changes and reserves the right to require a student occupant to move from one unit to another during the year, as necessary.” **Occupancy Agreement at 1, Exhibit 6.**

e. Similarly, “[g]uests are permitted as a privilege” and overnight guests “require the completion of the Guest Registration Form and the written approval of the Director of Residence Life.” **Occupancy Agreement at 1, Exhibit 6.** The student occupant thus has no control over his or her room or the exclusive right to use it.

f. The Occupancy Agreement provides that “Authorized Employees of the University of the District of Columbia, the Office of Residence Life Staff or facility staff have the right to enter your room or unit for administrative purposes, repairs, to inspect for compliance with health, fire or building codes, to inspect for compliance with University and

Residence policies, or for any other situation which the University or the Residence deems to be a danger to health, safety, or property.” **Occupancy Agreement at 2, Exhibit 6.**

g. The total control of the student rooms by UDC rather than the occupants of those rooms is also evidenced by the provision in the Occupancy Agreement that “[f]ailure to comply with any University Rules and Regulations may lead to termination of your Occupancy Agreement.” **Occupancy Agreement at 4, Exhibit 6.**

h. The Acceptance form also contains proof that the student occupants of the units have no exclusive use or control of their units by requiring the students to acknowledge that “I understand that I am an occupant and not a resident and that I have no rights in the housing as a resident or resident [*sic*].” **Acceptance form, attached to Occupancy Agreement at 6, Exhibit 6.**

i. Further evidence that UDC Office of Residence Life maintains complete control of the units and that the students have no such control is:

- Keys to the rooms are issued to the students, and lost keys replaced, by UDC, not Archstone. **Occupancy Agreement at 2, Exhibit 6.**
- Resident Assistants have their own units at Archstone Van Ness and monitor the students in the converted units. **UDC Application for Campus Plan at 23, Exhibit 7.**
- The students must agree to attend mandatory housing meetings. **Acceptance 6, Exhibit 6.**
- The UDC campus police respond to any disruptions involving the converted units, rather than Archstone.

- Archstone disavows all responsibility for the UDC units although these are located within the Archstone housing accommodation. If tenants complain about disturbances emanating from the UDC units, Archstone instructs the tenants to direct their complaints to UDC, and refuses to accept any responsibility notwithstanding their legal obligation under their leases with tenants to provide the tenants with quiet enjoyment of their premises. **UDC Application for Campus Plan at 23, Exhibit 7.**

C. The Converted Units also do not fall within the Definition of “Dormitory” under the Zoning Regulations.

1. The term “dormitory” is not defined in the Zoning Regulations. Those regulations therefore instruct that the definition found in *Webster’s Unabridged Dictionary* should be used. See 11 DCMR § 199.2 (g).

2. Under that definition, “dormitory” means:

1: a room intended primarily to be slept in; *especially*: a large room providing sleeping quarters for many persons and sometimes divided into cubicles

2 : a residence hall providing separate rooms or suites for individuals or for groups of two, three, or four with common toilet and bathroom facilities but usually without housekeeping facilities.

3. The UDC units at Archstone Van Ness are not rooms intended primarily to be slept in like a large room divided into cubicles. Nor is Archstone Van Ness a residence hall with separate rooms for individuals who share a common toilet and bathroom facilities without housekeeping facilities.

4. The BZA has generally used the term “dormitory” in connection with students to refer to the use of an entire building as a residence hall. See *Watergate West, Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762 (D.C. 2003).

5. The term “dormitory” in the Zoning Regulations appears to be consistent with the definition of that term in the Rental Housing Act which defines it to mean “any structure or building owned by an institution of higher education or private boarding school, in which at least 95% of the units are occupied by presently matriculated students of the institution of higher education or private boarding school.” DC Code § 42-3501.03 (11).

6. UDC’s use of the units at Archstone Van Ness, although similar to what is normally considered dormitory use, does not appear to satisfy the plain language of the Webster’s Dictionary meaning.

D. The 21 Converted Units fall within the Definition of “Rooming house” in the Zoning Regulations.

1. “Rooming house” is defined as follows:

Rooming house – a building or part thereof that provides sleeping accommodations for three (3) or more persons who are not members of the immediate family of the resident operator or manager, and in which *accommodations are not under the exclusive control of the occupants*. A rooming house provides accommodations on a monthly or longer basis. The term “rooming house” shall not be interpreted to include an establishment known as, or defined in this title as, a hotel, motel, inn, bed and breakfast, private club, tourist home, guest home, or other transient accommodation (36 DCR 7627).

11 DCMR § 199.1 (emphasis added).

2. The 21 converted UDC units meet all the requirements of a “rooming house:”

- a. These units are part of a building that provides sleeping accommodations for three or more persons;
- b. The persons occupying the units are not members of the immediate family of the resident operator or manager;

- c. The accommodations are not under the exclusive control of the occupants; and
- d. The accommodations are provided on a monthly or longer basis.

3. The fundamental distinction between an “apartment” and a “rooming house” as defined in the Zoning Regulations is that an apartment is “exclusively for the use of and under the control of the occupants” while in a rooming house the “accommodations are not under the exclusive control of the occupants.” The UDC units not being under the exclusive control of the students clearly fall within the definition of rooming house.

4. UDC argues that the presence or absence of cooking facilities is a distinction between an apartment and a rooming house. This is not true as both can have cooking facilities. The definition of “rooming house” says nothing about cooking facilities. 11 DCMR § 330.6 (d) makes clear a rooming house may include cooking facilities.

E. A rooming house with a kitchen is not permitted as a matter of right in an R-5 District.

1. A rooming house is a use generally permitted as a matter of right in an R-4 District. 11 DCMR § 330.6. Moreover, any use permitted as a matter of right in an R-4 District is also allowed in an R-5 District. 11 DCMR § 350.4 (a).

2. However, there is a qualification to the rooming houses that are allowed as a matter of right in an R-4 District. The Zoning Regulations provide as follows in 11 DCMR § 330.6:

A rooming or boarding house shall be permitted as a matter of right in an R-4 District; provided:

* * *

(d) Cooking facilities are not provided in any individual unit ...

3. Each of the 21 converted units has a kitchen with cooking facilities.

Therefore, the use of these units as a rooming house is not allowed as a matter of right in an R-4

District under the Zoning Regulations, nor is it otherwise allowed as a matter of right in an R-5 District.

F. The building permit has therefore been unlawfully issued because it is intended to change the use of the 21 Archstone Van Ness apartments to a rooming house use not allowed by the Zoning Regulations in an R-5 District.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Statement of the Van Ness South Tenants' Association was served by electronic mail and by first-class mail, this 28th day of March, 2011, upon the following:

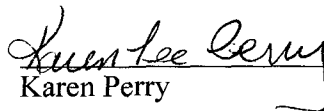
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