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May 11, 2016

Via IZIS

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

**Re: Additional statement in opposition to BZA Application
No. 18511A; 1018 Irving Street NW**

Dear Chairperson Heath and Members of the Board:

I write as an interested person and applicant Party to the above-mentioned case, now scheduled for examination at your public meeting on May 24, 2016. The present statement supplements my previously submitted Motion to Dismiss or Deny of March 22, 2016 (BZA No. 18511A, Exhibit 12) and is submitted in rebuttal to the letter of May 10, 2016 from the Applicant's representative, Mr. Martin P. Sullivan (BZA No. 18511A, Exhibit 16).

In Mr. Sullivan's letter, he characterizes his previous letter accompanying the Application of January 7, 2016 (BZA No. 18511A, Exhibit 6) as "a very preliminary statement" and concedes that "the original filing did not include nearly enough information to justify an extension". The new arguments put forward attempting to justify such an extension are as unconvincing as those previously submitted.

Indeed, the Applicant has now completely abandoned the claims set out in the original filing, despite Mr. Sullivan's agreement with Chairperson Heath during the Board's Public Meeting of January 26, 2016 that he would submit proof of the Applicant's efforts to secure tenants. This abandonment of the original justification and failure to provide such proof as agreed suggests that the Application was not submitted in good faith but instead simply as a maneuver to toll the expiration of the original Order in BZA No. 18511.

The Applicant now falsely claims that "**Following the approval in 2014**, the Applicant was about to apply for the building permit when it was made aware that **recent changes in the Building Code Supplement (DCMR Title 12A) prevented the project from moving forward**" (emphasis added). The Applicant cites 12A DCMR §118.6.1 and 12A DCMR §118.6.6 as the so-called "recent changes". Contrary to the Applicant's claim, those two sections in fact repeat provisions in effect from 2008, substantially identical in their import

(District of Columbia Construction Codes Supplement of 2008; DCMR 12a Building Code Supplement):

124.5.2.1 Every record and tax lot that is legally capable of supporting a structure or a site facility shall have an address regardless of whether the property is occupied or vacant.

124.5.2.6 No street number shall be assigned to a building, site facility or occupancy that has its access onto an unnamed street or alley. If an address is required for an occupancy, structure or site facility in such an instance, the street or alley must first be named according to the process described in Section 6.3 below.

These provisions were in effect at the time the Applicant acquired the Property in September 2012 or thereabouts; they were in effect at the time of the original Application in BZA No. 18511 on December 17, 2012; they were in effect at the time the Board decided to grant the requested variances on July 23, 2013; and they were in effect on the effective date of the original Order on January 26, 2014. At any point since acquiring the Property, the Applicant could well have initiated the process of having the alley named. Instead, the Applicant failed to do so until some unspecified date between January 26, 2014 and October 6, 2015 (the date on which D.C. Bill No. 21-421 was introduced in the Legislative Meeting of the D.C. Council).

It is disingenuous at best for the Applicant to assert now that “the delay in naming the alley...is beyond the Applicant’s reasonable control” (BZA No. 18511A, Exhibit 16). While D.C. Bill No. 21-421 has indeed been pending for eight months, that period – admittedly lengthy – pales in comparison to the 30 or more months during which the Applicant seems to have made little or no effort to initiate the naming process. That protracted delay was fully within the Applicant’s reasonable control, and it cannot now serve as justification for an extension in the validity of the Order in BZA No. 18511.

It is also disingenuous at best for the Applicant to reassert that “in accordance with the requirements of Section 3130.6(b), there are no changes to the facts upon which the Board based its original decision” (BZA No. 18511A, Exhibit 16). In my previous Motion to Dismiss or Deny (BZA No 18511A, Exhibit 12), I identified three findings of fact in the original Order that are contradicted by the Applicant’s own submissions in BZA No. 18511B, and the Applicant has provided no evidence in rebuttal. I need not repeat them at this time.

The plain evidence of the Applicant’s own submissions in BZA No. 18511B is that it no longer has any intention of proceeding to implement the Order in BZA No. 18511. In order to toll the expiration of that Order, the Applicant submitted an Application for extension that, but its own admission, “did not include nearly enough information to justify an extension”. The ostensible justification put forward at that time has now been abandoned, and the justification now advanced is equally unconvincing.

The Board of Zoning Adjustment should not permit the Applicant to abuse the process of extension permitted under 11 DCMR § 3130, but should instead dismiss, or in the alternative, deny, its Application in this matter.

Thank you, in advance, for your consideration of this statement.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Proschan". The signature is written in a cursive, flowing style.

Frank Proschan

cc. Martin P. Sullivan
ANC 1A
Toks Ladejobi
Office of Planning