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April 7, 2016

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

**Re: Application No. 19187 — 1212–1218 4th Street NW (Square 513, Lots 155 and 156)
Applicant's Clarification on Conditions**

Chairperson Heath and Honorable Members of the Board:

On behalf of the Applicant, 1212-1216 4th Street, LLC, please find enclosed the Applicant's Clarification on Conditions.

At the conclusion of the hearing on March 15, 2016, the Board requested that the Applicant submit an information draft order ("Draft Order") by March 29, 2015. The night before the scheduled Decision hearing of April 5, 2016, Cheryl Stein and Commissioner Rachelle Nigro requested to reopen the record to clarify the conditions proffered by the Applicant. Please note, neither ANC Commission Nigro nor Ms. Stein stated opposition to the proposed project; rather, they merely sought to clarify the proffers and conditions the Applicant has agreed to.

The Applicant, after many months of working with the community, is dismayed by the suggestion from both parties that it is seeking to repudiate any of the proffers that it has agreed to on several occasions, verbally and in writing, including in the Draft Order. Each of the proffers the Applicant has made is clearly stated in the Draft Order; Ms. Stein's letter even cross-references the Draft Order by page. It is our opinion that confusion only exists because the Applicant, out of respect for the Board's authority to impose conditions, maintained a deferential tone for the Board to determine which proffer(s) to include as conditions of an order.

Board of Zoning Adjustment
District of Columbia
CASE NO. 19187

In our prior filings, at the hearing, and on the record on April 5, 2016, we confirmed the proffers the Applicant agreed to and affirmed the proffers the Applicant has made over the course of its community outreach.

Now, to clarify, remove all doubt, and address the concerns of the community, the Applicant hereby submits a list¹ outlining the proffers the Applicant *invites the Board to include* as conditions in its Order. Should the Board find the variance standard to be satisfied and deems approval appropriate, the above referenced list of conditions can be added to a summary order. Further, to allay community concerns regarding forthrightness, the Applicant notes that the DC Court of Appeals permits an Applicant to proffer conditions to be included in an order from the Board and that the conditions proffered cannot be rescinded in a different forum. *See, President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 72 (D.C. 2003), finding no case in which “a party has successfully persuaded this court to invalidate a provision which was included in an order at that party’s behest.”

Notwithstanding the above, the undersigned counsel must assert and respectfully disagree with Commissioner Nigro that all proffers and conditions must be located on the last page of a Draft Order to be binding upon the Applicant. Further, it is important to note, if a summary order is issued, then the architectural plans (which clearly show items 1, 2, 3, and 5 of the conditions listed in Commissioner Nigro’s letter) would be legally binding on the Applicant. *See*, 11 DCMR § 3125.7, “Approval of an application shall include approval of the plans submitted with the application for the construction of a building or structure (or addition thereto) or the renovation or alteration of an existing building or structure, unless the Board orders otherwise.” *See Also*, 11 DCMR § 3125.8, “An applicant shall be required to carry out the construction, renovation, or alteration only in accordance with the plans approved by the Board, unless the Board orders otherwise.”

As noted at the hearing by Commissioner Nigro, the majority of residents and ANC 6E approve of the Applicant’s proposed plans and proffered conditions. *See*, March 15, 2016 BZA Hearing Transcript, page 159, lines 19-21, “But the majority, and certainly with the ANC, we are good with the current plan. With the parking garage.” Thus, it is the Applicant’s hope that this technical issue will not obfuscate or detract from the months of evolving community discussion that shaped the design of this Project in a number of significant ways. The ultimate result of the extensive community engagement is a Project that the community and the ANC continue to support.

¹ Commissioner’s Nigro’s letter includes the following five conditions:

- 1) Reduced Massing and Removal of the Penthouse
- 2) Revised Façade on Ridge St. to resemble rowhome on Ridge Street.
- 3) Neighborhood Servicing Retail Space
- 4) Increased parking to approximately 29 spaces requested by ANC 6E04 or 27 space[s] as agreed upon in Exhibit 37
- 5) Reduced Unit Count to 22 units.

Conditions 1, 2, 3, and 5 are not proffers; they are fundamental changes the Applicant made to the project in response to community concerns and comments. The application, including the architectural plans the Board reviewed, reflected those changes.

As to Condition 4, pursuant to the agreement with Sergei Mikhailov, and as stated in the Draft Order on page 2, the Applicant proffers to provide a minimum of 27 parking spaces.

The Applicant respectfully submits that for the reasons enumerated in its prior submissions, at the hearing, and as detailed concisely in the Draft Order, the application satisfies the requirements for the relief requested. Therefore, as there are no parties in opposition, should the Board find the variance standard to be satisfied and deems approval appropriate, the Applicant respectfully request that a summary order, subject to the attached conditions, be issued.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP



Meridith H. Moldenhauer

Enclosures:

Cc: Advisory Neighborhood Commission 6E
c/o Marge Maceda, Chair (via email)
Single Member District 6E04 Commissioner Rachelle Nigro (via email)
Karen Thomas, Office of Planning (via email)
Cliff Moy, Board of Zoning Adjustment (via email)

APPLICATION NO. 19187 OF 1212-1216 4TH STREET, LLC

LIST OF PROFFERS

The Applicant invites the Board of Zoning Adjustment to include as conditions to its Order the following proffers:

Voluntary Exclusion from RPP Eligibility

The Applicant agrees to restrict residents from obtaining residential parking permits (RPP) by including the following restrictions in the condominium documents recorded against the Property, as follows:

1. The Applicant/Condo Board shall include in its condominium documentation a provision that prohibits residents/owners from obtaining an RPP for the Property from the D.C. Department of Motor Vehicles (“DMV”), under penalty of fine(s) against the condominium unit owner;
2. The Applicant/Condo Board shall obtain written authorizations from each owner, either through a deed provision or another written document that allows the DMV to release the Applicant/Condo Board any and all records of that resident/owner requesting or receiving an RPP for the Property;
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 Property, and shall provide annually the Condominium Board the results of its inquiries; and
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 as part of this application

Availability of Excess Parking Spaces to 200 Footers

1. The Applicant shall provide a minimum of twenty-seven (27) parking spaces as part of the Project;
2. The Applicant shall limit the number of parking spaces available to the residents of the Project to one parking space per dwelling unit or not to exceed twenty-two (22) parking spaces being utilized by those residents;

3. The Applicant shall make the remaining parking spaces (the, "Excess Parking Spaces") available to all property owners within two hundred (200 feet) (the "Nearby Property Owners") as follows: Six (6) months after the issuance of a Certificate of Occupancy for the Project or six (6) months after seventy-five percent (75%) of the dwelling units for the Project have been sold or leased, whichever date is later, notice shall be given to the Nearby Property Owners stating that they shall have thirty (30) days from the date of the notice to send a letter of intent to purchase or lease the Excess Parking Spaces available after parking spaces have been offered to the residents of the Project. The Excess Parking Spaces shall be available to the Nearby Property Owners for purchase or lease on a first-come, first-serve basis.
4. The Applicant agrees to offer the Excess Parking Spaces to Nearby Property Owners at a purchase price or rental price of fifteen percent (15%) below Market Rate. (i.e. Market Rate- 15%).