BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of Richardson Place Neighborhood Association

BZA Order No. 19441

MOTION FOR RECONSIDERATION

I. INTRODUCTION

This Motion for Reconsideration ("Motion") is submitted on behalf of OTD 410-412 Richardson Place LLC ("OTD"), the owner Square 507, Lots 101 and 102, which are the properties that were the subject of the appeal filed by the Richardson Place Neighborhood Association ("RPNA") in Board of Zoning Adjustment ("Board" or "BZA") Case No. 19441. This Motion is subject to the procedural requirements of the Zoning Regulations of 2016 ("ZR16"). However, the building permit applications and certificates of occupancy at issue in this appeal were filed and accepted as complete by the Department of Consumer and Regulatory Affairs ("DCRA") prior to the enactment of ZR16. Thus, in accordance with Subtitle A § 102.2 of ZR16, since the building permit plans are consistent with the 1958 Zoning Regulations ("ZR58") the project is a vested project under ZR58.

As set forth below, OTD respectful requests that the BZA reconsider its decision in BZA Order No. 19941 dated February 4, 2019, final and effective February 14, 2019, (the "Order") and deny the appeal filed by RPNA.

II. PROCEDURAL REQUIREMENTS

Pursuant to Subtitle A § 700.2 of ZR16 "[a]ny party may file a motion for reconsideration of any decision of the Board, provided that the motion is filed with the Director within ten (10) days from the date of issuance of a final written order by the Board. The motion shall be served

on all other parties to the proceeding at or before the time the motion is filed with the Board." Pursuant to Subtitle Y § 700.7, a motion for reconsideration shall state specifically:

a. All respects in which the final order is claimed to be erroneous; and

b. The relief sought.

This Motion is filed on February 11, 2019, within 10 days of the date of issuance of the Order. As stated above, OTD respectfully requests that the Board deny RPNA's appeal. Section IV(A) below describes the erroneous aspects of the Order. As shown on the attached certificate of service, OTD has served this Motion on RPNA and Advisory Neighborhood Commission ("ANC") 5E, which are the only other parties to the proceeding.

III.
BURDEN OF PROOF

Pursuant to Subtitle X § 1101.2 of ZR16, RPNA has the burden of proof to justify the granting of the appeal. *See* BZA Order No. 17667 (dismissing the appeal from a decision of the Zoning Administrator to allow off-premises alcoholic beverage sales as an accessory use since the appellant failed to meet its burden of proof); *see also* BZA Order No. 18429 (dismissing the appeal of a decision by the Zoning Administrator to issue building permits to allow the construction of a three-story deck since the appellant did not meet its burden of proof). RPNA requested that the Board overrule the determination of the Zoning Administrator ("ZA") that the buildings are "flats". RPNA's arguments were based solely upon RPNA's concerns about how the properties ***might, hypothetically*** be operated in the future and that the buildings ***might, hypothetically*** exceed their permitted occupancy in the future. However, certificates of occupancy "enjoy a presumption of validity" and RPNA submitted no evidence to satisfy its burden of proof to overturn the decision of the ZA, who is the District official in charge of interpreting the Zoning Regulations. *See Burka v. Aetna Life Ins. Co., D.D.C.*, 945 F. Supp. 313,

318 (November 15, 1996); *see also* DC Reorganization Order No. 55, Part III(F). The only evidence of record is that the buildings were constructed in compliance with all District laws and regulations, including the applicable Zoning Regulations. RPNA did not submit any evidence regarding why these specific buildings did not meet the definition of a "flat". Thus, RPNA has not satisfied its high burden of proof.

IV.
STANDARD OF COURT REVIEW

In addition to RPNA failing to meet its burden of proof, the Order is erroneous since it does not include findings of fact regarding the material contested issues, and does not refer to any evidence in the record submitted by RPNA to support the Board's findings of fact. Thus, the Board's conclusions cannot flow rationally from its findings. When reviewing agency action, the D.C. Court of Appeals has repeatedly stated that the Board must consider whether the Board's findings are sufficiently detailed and comprehensive to permit meaningful judicial review of its decision. *See Metropole v. Board of Zoning Adjustment*, 141 A.3d 1079 (D.C. 2016). An agency's interpretation of regulations is typically accorded great weight *unless* such interpretation is plainly erroneous or inconsistent with regulations. *Id.* In reviewing agency action, the D.C. Court of Appeals must determine: (1) whether the agency has made a finding of fact on each material contested issue of fact; (2) whether substantial evidence of record supports each finding; and (3) whether conclusions legally sufficient to support the decision flow rationally from the findings. *See Ait-Ghezala v. Board of Zoning Adjustment*, 148 A.3d 1211 (D.C. 2016).

In *Metropole*, the D.C. Court of Appeals remanded the Board's grant of variance relief and held that although the Court would normally defer to the Board's interpretation of the Zoning Regulations, the Board made no findings concerning the material issues at hand.

Metropole, 131 A.3d. at 1084. The Court reasoned that "[i]f the Board's finding is that incorporating the historic structures on the property makes it impossible to comply with the parking requirements, the Board should ***explain why*** those historic structures are an extraordinary condition on the property that merits the granting of a variance for the parking requirement." *Id.* (emphasis added). The Court specifically stated that on remand the Board "should consider ***all the evidence*** in the record and provide the court with its findings and rationale." *Id.* (emphasis added).

In *Ait-Ghezala*, the D.C. Court of Appeals similarly remanded the Board's grant of special exception and variance relief since the Board "has a 'duty to explain fully the reasons underlying its understanding of the factors shaping its ultimate conclusion.''' *Ait-Ghezala* 148 A.3d at 1218 (*quoting A.L.W., Inc. v. District of Columbia Board of Zoning Adjustment*, 338 A.2d 428, 432 (D.C. 1975). Regarding the variance relief, the Court remanded the BZA case since "the Board ***failed to explain*** why the fact that the 9th Street Property is among the larger properties in its square should be understood to make it exceptional or extraordinary for the purposes of considering a variance from parking requirements." *Id.* The Court reiterated its holding in *Metropole* that on remand the Board should consider all the evidence in the record and provide the court with its findings and rational for its conclusions. *Id* at 1218.

Similar to *Metropole* and *Ait-Ghezala*, the Board made no findings of facts regarding why the buildings were not "flats" and did not explain the reasons underlying its conclusion. Moreover, the Board failed to explain why the properties were not flats and the Board failed to consider all the evidence in the record.

V.
THE BOARD'S CONCLUSIONS ARE NOT SUPPORTED BY EVIDENCE IN THE RECORD AND DO NOT FLOW RATIONALLY FROM IT FINDINGS

A. The Order

The legal issue in the case is clear. It is whether the buildings constitute "flats" as defined in the Zoning Regulations. *See* RPNA's Notice of Appeal, pg. 6-7 (Exhibit 2 of the record). However, the Order provides no findings of facts or conclusions of law that indicate why the structures do not meet the definition of a "flat". Indeed, the Order does not identify the proper use category of the buildings, nor does the Order describe why the buildings should be treated as falling within a different use category. Moreover, the Board's conclusions of law are contrary to the evidence in the record; do not describe or analyze the evidence presented by the parties; do not indicate why the Board decided to disregard the expert testimony presented in the case; and do not indicate why the Board decided to give greater weight to RPNA's hypothetical assertions as opposed to the Board's own statements made at the public meeting on May 17, 2017.

The Board granted the appeal based on the following:

> The Zoning Regulations defined a "flat" or "two-family dwelling" as "a dwelling used exclusively as a residence for two families living independently of each other," where "family" was defined as "one or more persons related by blood, marriage, or adoption, or not more than six persons who are not so related, including foster children, living together as a single house-keeping unit, using certain rooms and housekeeping facilities in common …." (11 DCMR § 199.1.) The Appellant provided ***evidence*** showing that the planned co-living use ***potentially would*** not be established and operated consistent with a two-family flat as that use is defined in the Zoning Regulations; for example, a group of unrelated people living together ***might not*** constitute a single house-keeping unit, or the control of the premises by Common might negate the required characteristic of residences functioning independently of each other. In addition, the "co-living" arrangement ***could potentially*** alter the character of the neighborhood in a manner inconsistent with the R-4 zoning designation of the subject property by introducing a use inconsistent with the zoning definition of "flat" as a two-family dwelling.

See Order, page ("pg.") 6 (emphasis added).[1] These conclusions are erroneous since RPNA did not submit any actual evidence regarding how the properties would actually operate. In addition, the Board granted the appeal since the "co-living" arrangement could potentially alter the character of the neighborhood. However, "the character of the neighborhood" was not raised as an issue on appeal by RPNA, nor is "the character of the neighborhood" the legal standard for an appeal, which is simply whether the building permits and certificates of occupancy were issued in error. *See* 11-X DCMR § 1102; *see also* RPNA's Notice of Appeal, pg. 6-7 (Exhibit 2 of the record).

The Board's conclusions also ignore all of the evidence submitted by both OTD and DCRA that demonstrate that the buildings constitute "flats". The D.C. Court of Appeals has held that "[w]hile agencies are not always bound to accept expert testimony over lay testimony…the opinions of qualified experts are not be lightly disregarded and the probative value of lay opinions are often doubtful." *See Shay v. Board of Zoning Adjustment*, D.C. App., 334 A.2d 175, 178 (March 19, 1975). In *Shay*, the Court reasoned that "some indication in the findings as to the reasons for rejecting the expert testimony in favor of the lay witness was certainly required…" *Id.* OTD proffered Mr. Shane Dettman, Director of Planning Services of Holland & Knight LLP, as an expert in zoning and land use. *See* OTD's Prehearing Statement in Opposition to Appeal, pg. 20 (Exhibit 32 of the record). Mr. Dettman has been accepted as an expert in numerous cases before the BZA and Zoning Commission, and previously served as the Vice Chair of the BZA. In addition, the ZA is an expert in zoning and land use since the ZA is responsible for interpreting the Zoning Regulations. *See* DC Reorganization Order No. 55, Part III(F). Despite this clear instruction by the D.C. Court of Appeals, the Order does not include a single finding of

[1] While this Motion only raises these issues as clearly erroneous, OTD does not waive its right to challenge the entirety of the Order on appeal.

fact or conclusion of law indicating why the Board decided to credit the testimony of RPNA (a lay person) over the expert testimony of both Mr. Dettman and the ZA.

B. The Board's Deliberations

As is further evidenced by the Board's deliberations on the appeal, the Board's conclusions do not flow from its findings. In fact, the Board's own words support dismissal of the appeal. Specifically, at the public meeting to decide this case on May 17, 2017, Chairman Hill stated "**I agree with DCRA's definition and how they applied that**. The part that I was having a little bit of difficulty with in terms of the appellant was the independently of each other." March 17, 2017 Tr., pg. 275. Chairman Hill further states "I wouldn't have any conflict, I suppose, if the two flats were controlled by different organizations, whether families were living independently of each other. I would not have a problem with the definition." *Id* at 276. The Order states that the Board "gives no merit to the RPNA's contention that the two buildings should be considered one building." *See* Order, footnote 4. Thus, the Board concluded that the buildings are independent of one another, which was the only concern raised by Chairman Hill that could potentially support the appeal.

During deliberations, Boardmember Hart stated that the case comes down to "definitions" and concluded that "DCRA was within their bounds when they were deciding to issue the permit." *Id.* at pgs. 279-280. Similarly, Boardmember White clearly stated that "**DCRA did meet their burden in terms of proving that these units, these various units did constitute families, if you look at the strict definition of the D.C. Municipal Regulations.**" March 17, 2017 Tr., pg. 280. In addition, she stated that "**I think if you look at the regulations strictly, that they met the parameters of the definition of a flat for those two buildings**. *Id.* at pg. 281. Although Commissioner Hood acknowledged that the appeal turns on the "definitions", he stated

"[a]nd I know this is maybe not part of the appeal, but this actually is getting ready to change the character of a neighborhood, and we're doing it under the auspices of definitions." *Id.* at 282.

Thus, the Board's decision to grant the appeal is directly contrary to their statements that the use meets the legal definition of a "flat", which was the only legal question at issue in the appeal. Moreover, the conclusion in the Order that "the "co-living" arrangement ***could potentially*** alter the character of the neighborhood" was not before the Board and is not a legal basis for granting the appeal.

B. DCRA's Argument

The record is clear that the ZA properly approved the building permits and certificates of occupancy at issue in this case. Specifically, the ZA determined:

- That the proposed buildings are each a two-family dwelling as defined by Section 199.1 of ZR58. *See* DCRA Prehearing Statement, pg. 3 (Exhibit 33 of the record).
- Each of the buildings will include two family units, each of which have a shared kitchen, half-bath, living and dining room, lounge room, washer/dryer, and HVAC, electric, and plumbing systems. Thus, these shared facilities meet the definition of "family" in Section 199.1. *Id.* at pg. 4.
- Under the definition of "family", up to six (6) unrelated residents (but no limitation on the number of related residents) may share "certain rooms and housekeeping facilities". Each of the family units in the buildings have only six bedrooms, each with its own bathroom, which in combination with the shared dining, cooking, and living facilities classifies each family unit as a such. Since each of the buildings has just two family units, each of the buildings is a "two-family dwelling" or a "flat". *Id.*

- It is not his "role as Zoning Administrator" to determine whether the "Zoning Regulations need to speak to co-living" and in this situation the zoning "code gave [him] clarity for this situation" in that the proposed buildings were "flats". Testimony of Matt LeGrant, March 22, 2017 Tr., pg 396.

In making his decision, the ZA reviewed the certificate of occupancy applications, conducted a field survey, and reviewed a zoning inspection report which confirmed the representations made by OTD. The ZA weighed this concrete evidence against the RPNA's claims about how Common Living ("Common"), OTD's property manager, operates buildings in other jurisdictions. Based on the information available to the ZA, the ZA properly concluded that the proposed use of the properties was a flat. *See* DCRA's Post Hearing Submission, pgs. 2-3 (Exhibit 40 of the record). Thus, the ZA weighed RPNA's conclusory allegations against the required, sworn materials included with the building permit and certificate of occupancy applications and determined that the building permits and certificates of occupancy should be issued.

The Order does not include a single finding of fact regarding why the Board credited the testimony of RPNA over the testimony and evidence submitted by the ZA, the very person who is responsible for interpreting the Zoning Regulations.

C. OTD's Argument

The Board's conclusion that the properties "***potentially would*** not be established and operated consistent with a two-family flat as that use is defined in the Zoning Regulations," is contrary to the evidence and testimony of record submitted by OTD demonstrating that the properties have been designed to and would be operated in accordance with the definition of a "flat". Specifically, OTD submitted the following:

- Each building will have their own separate locked entrances and the residents will not have access to the other building. *See* Testimony of Shane Dettman, March 22, 2017 Tr., pg. 310.
- As shown on the building permit plans submitted with the building permits, and as submitted in the testimony of Mr. Dettman, each building includes two separate units ("Unit A" and "Unit B"). Each unit in each building is separate and distinct as evidenced by the separate addresses, separate entrances, separate mailboxes, separate utility meters, and separate electric panels. Thus, each flat includes two separate units. *See* Exhibits 32F and 32G of the record; *see also*, Testimony of Shane Dettman, March 22, 2017 Tr., pg. 310. The Order concedes that the Board found "no merit in the RPNA's contention that the two buildings at issued should be considered one building since [OTD's] use would function as one facility. *See* Order, footnote 4.
- As detailed in the Affidavit of Simon Jawitz, CFO and Head of Real Estate Acquisition of Common (Exhibit 32H1-32H2 of the record), each unit will have a maximum occupancy of six residents. The residents of each unit operate as a single household. *See*, Affidavit of Simon Jawitz, ¶ 6(f).
- Each unit's residents will live as a single housekeeping unit, and will jointly be responsible for the upkeep of their unit. Residents of each unit only have access to their individual unit and will not have access to any of the other adjacent units, or any of Common's other properties. *See*, Affidavit of Simon Jawitz, ¶ 6(h). In this case, the common areas of each unit will be shared among residents of that unit, and these common areas include a common kitchen, powder room, study, laundry facilities, and

dining room all as shown on the respective building permit plans. *See* Exhibits 32F 32G, and 32I of the record.

- As evidenced by the photographs included at Exhibit 32I of the record, the residents of each unit will (i) share common televisions since there are no individual television hookups in the unit's individual bedrooms; (ii) share kitchen supplies such as pots, pans, dishes, utensils; (iii) share and have joint use of certain rooms and laundry facilities in common as stated above; and (iv) have the ability to cook and share meals together, all of which are intended to promote communal living among the residents of each unit.
- The building operator will comply with all the laws and regulations of the District of Columbia. *See* Testimony of Simon Jawitz, March 22, 2017 Tr., pg. 333-334.
- OTD clearly addressed how the proposed use is not an apartment house, a rooming house or rooming unit, nor a tenement house. *See* Owner's Prehearing Statement, pgs. 15-19 (Exhibit 32 of the record); *see also* OTD's PowerPoint Presentation, pgs. 28-30 (Exhibit 35 of the record).

As stated above, the Order does not include a single finding of fact regarding why the Board credited the hypothetical evidence submitted by RPNA over the testimony and actual evidence submitted by OTD, and its expert Mr. Dettman, indicating that the properties were designed and will be operated in accordance with all applicable laws and regulations.

D. RPNA's Argument

RPNA did not submit any evidence to support its position that the buildings as designed do not meet the definition of a "flat," nor did RPNA submit any evidence indicating that the buildings will not be operated in accordance with applicable District laws and regulations. In

addition, the Order did not reference any evidence submitted by the RPNA to support the Board's conclusions. The following evidence was submitted by RPNA:

- Common's general webpage (Exhibit 9H of the record);
- Technical.ly, Curbed, and Washingtonian articles about co-living coming to the District (Exhibits 9J and 9K of the record);
- Fair Housing Act Complaint regarding the definition of a "dwelling" under the Fair Housing Act. (Exhibit 9N of the record);
- Articles about Common's operations in other jurisdictions (Exhibit 34 of the record);
- Common's webpage for the properties which states that the building will be flats (Exhibit 34A of the record);
- A craigslist advertisement for one of the bedrooms on one the properties that were the subject of the appeal (Exhibit 34B of the record);
- A general overview how Common structures its pricing, with examples of pricing comparisons to units in New York (Exhibit 34C of the record);
- A job posting for a Community & Member Experience Manager at one of Common's properties in New York (Exhibit 34D of the record); and
- A decision from New York Environmental Control Board (Exhibit 34E of the record)

RPNA argued that the Zoning Regulations state that the residents must use all rooms and housekeeping facilities in common. RPNA's Memorandum in Support, pg. 15. However, the Zoning Regulations only require that residents of a flat use "certain rooms and housekeeping facilities in common." 11 DCMR § 199.1.

RPNA argued that the residents of each unit cannot be a single housekeeping unit since the "flats" will be occupied by "24 unrelated persons living together in private rooms with en-

suite bathrooms" and the property manager "takes care of the chores and duties that might otherwise suggest a collective group of unrelated people are 'living together as a single house-keeping unit.'" *See*, RPNA's Memorandum in Support, pg. 14 (Exhibit 9 of the record). However, the evidence of record demonstrates that this is not the case. *See*, Affidavit of Simon Jawitz, ¶ 6(f) (Exhibit 32H of the record). This argument also fails based on the Board's conclusion that each of the buildings are separate properties. *See* Order, footnote 4.

The crux of RPNA's claim is that the building permits and certificates of occupancy should not have been issued based on internet postings from New York and other locations. However, when RPNA's allegations are balanced against the required, sworn materials included with certificate of occupancy applications and the evidence noted in DCRA's filing, the ZA had all of the required evidence necessary to issue the building permits and certificates of occupancy.

In fact, RPNA admitted during the public hearing that they did not provide any actual information indicating that the properties in this case will not be operated in accordance with DC laws. At the public hearing the following exchange occurred:

> MR. FREEMAN: Mr. Wilson, you started with a citation from a YouTube video, and you followed a lot of articles about how Common operates in New York and California. Have you submitted anything about how Common will operate in D.C.? Do any of those articles relate to how Common will operate in D.C.?
>
> MR. WILSON: **None of them indicate how Common will operate in D.C.**

See March 22, 2017, Transcript ("tr."), p. 242 (emphasis added).

Simply put, RPNA did not meet its burden of proof since RPNA did not submit any actual evidence that demonstrates that the properties were not constructed in accordance with the approved building permits, or that the properties will not be operated in accordance with all applicable District laws and regulations. RPNA's complaint has always stemmed from

hypothetical concerns about how the properties will be used based upon how the property manager operates in other jurisdictions. *See* Exhibits 9H-9M of the record.

E. ANC 5E Report and Testimony

The Board shall only give "great weight" to the written report of the Advisory Neighborhood Commission ("ANC") if the report meets the requirements of Subtitle Y § 503.2 of ZR16. The ANC report must contain "the issues and concerns of the ANC about the appeal, **as related to the standards against which the application shall be judged**." 11-Y DCMR § 503.2(e) of ZR16. The "great weight" requirement only extends to issues and concerns that are legally relevant. *See Concerned Citizens of Brentwood v. Board of Zoning Adjustment,* D.C. App., 634 A.2d 1234, 1241 (December 22, 1993)(the Board was not required to give great weight to the ANC's concerns since they were not relevant to the legal issue at hand).

Nowhere in ANC's 5E's report did the ANC address why the buildings on the properties did not meet the definition of a "flat". *See* ANC 5E Report (Exhibit 36 of the record). As stated in the Order, the concerns raised in the ANC 5E Report we regarding a different iteration of the project, which was not the subject of the appeal. *See* Order, footnote 5. Furthermore, while the issue at appeal was the definition of a flat under the Zoning Regulations, ANC 5E's representative admitted the ANC was unaware of the definitions in the Zoning Regulations and that she did not know "that [she] was going to have to use only the definitions that are based on the zoning definitions." *See* March 22, 2017, Tr., pg. 291. Since there was no discussion in the ANC Report about the issues of the appeal, the Board should not have given great weight to the ANC Report.

VI.
ESTOPPEL

Even if the Board concludes that this Motion should be dismissed, the Board should be estopped from reviewing the building permits and certificates of occupancy, or enforcing the Zoning Regulations against OTD because OTD relied to its detriment on the building permits and certificates of occupancy at issue in the appeal. The doctrine of equitable estoppel protects the reliance interests of property owners by placing limitations on the exercise of a local government's police power. Under this doctrine, a local government may be equitably estopped from revoking a zoning decision when a property owner: (1) acting in good faith; (2) on affirmative acts of the local government; (3) makes expensive and permanent improvements in reliance on those affirmative acts; and (4) the equities strongly favor the party invoking the doctrine. *Wieck v. D.C. Bd. of Zoning Adjustment*, 383 A.2d 7, 11 (D.C. 1978).

While "the doctrine of equitable estoppel has traditionally not been favored when sought to be applied against a government entity, . . . it is accepted that in certain circumstances an estoppel may be raised to prevent enforcement of municipal zoning ordinances." *Saah v. D.C. Bd. of Zoning Adjustment*, 433 A.2d 1114, 1116 (D.C. 1981); *see also Rafferty v. D.C. Zoning Comm'n*, 583 A.2d 169, 174 (D.C. 1990) (noting that where "a party acting in good faith under affirmative acts of a city has made such expensive and permanent improvements that it would be highly inequitable and unjust to destroy the rights acquired, the doctrine of equitable estoppel will be applied") (*quoting District of Columbia v. Cahill*, 54 F.2d 453, 454 (D.C. 1931)).

The evidence in the appeal record clearly demonstrates that OTD has satisfied all of the elements necessary to raise an estoppel defense. First, OTD acted in good faith in constructing and occupying the buildings on the properties, having complied with all appropriate laws and regulations in order to receive building permits and certificates of occupancy from the District.

Second, there is no question that OTD acted in reasonable reliance on an affirmative act of the District government—specifically, the issuance of the buildings permits and certificates of occupancy by DCRA. Third, the flats, which have been under roof and occupied for nearly two years, are the paradigm of an expensive and permanent improvement. Fourth, the prejudice tips decisively in favor of the OTD for all the reasons stated above.

Accordingly, even if the Board concludes that this Motion should be denied, which it should not for all the reasons stated above, the Board should be estopped from reviewing the building permits and certificates of occupancy, or enforcing the Zoning Regulations against OTD.

VII
CONCLUSION

The legal standard for granting an appeal – the result of which in this case is to revoke validly issued building permits and certificates of occupancy for two buildings – is a high bar and must be supported by actual evidence. However, in this case, the Board credited hypothetical evidence submitted by RPNA, and without explanation, disregarded the actual evidence submitted by DCRA and OTD indicating that the properties were designed and constructed in accordance with all applicable District laws and regulations, and will be operated in accordance with all applicable laws and regulations. Importantly, the Board's Order does not include findings on each material contested issue of fact; (2) there is no substantial evidence of record that supports the Board's findings; and (3) the Board's conclusions of law do not flow from the Board's findings, the evidence of record, or the Board's own statements during their deliberations in this case. As a result, the Board should reconsider is Order and should conclude that RPNA did not meet its burden of proof and that the appeal should be dismissed.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 

Kyrus L. Freeman
Joseph O. Gaon

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Reconsideration was filed electronically with the Office of Zoning and was sent by first-class mail and electronic mail, this 11th day of February, 2019, to the following:

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