



October 10, 2017

**Meridith H. Moldenhauer**

Direct Phone 202-747-0763  
Direct Fax 202-683-9389  
mmoldenhauer@cozen.com

Via IZIS

Frederick L. Hill, Chairperson  
Board of Zoning Adjustment  
441 4<sup>th</sup> Street, NW, Suite 210S  
Washington, DC 20001

**RE: Appeal No. 19573  
Property Owners' Agent Authorization and Motion to Dismiss Appeal for  
Failure to State a Claim with Motion to Strike**

Chairperson Hill and Honorable Members of the Board:

This firm represents Graham Smith and Alexis Diao, the homeowners of the property located at 3616 11<sup>th</sup> Street, NW (the "Property"). This appeal concerns a revised building permit issued for construction at the Property. Pursuant to Subtitle Y § 501.1(c), the owner of a property that is the subject of an appeal is automatically a party to that appeal. Accordingly, please find attached an agent authorization, attached at Tab A, for this appeal as well as a Motion to Dismiss Appeal for Failure to State a Claim with a Motion to Strike, attached at Tab B, on behalf of Graham Smith and Alexis Diao.

We appreciate the Board's attention to this appeal and we look forward to the hearing before the Board on October 18, 2017.

Sincerely,

COZEN O'CONNOR

BY: MERIDITH H. MOLDENHAUER

LEGAL\32813654\1

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of October, 2017, a copy of the foregoing Agent Authorization and Motion to Dismiss Appeal with Motion to Strike was served, via electronic mail, on the following:

District of Columbia Department of  
Consumer and Regulatory Affairs  
c/o Maximilian Tondro, Assistant General Counsel  
1100 4<sup>th</sup> Street, SW, Ste. 5266  
Washington, DC 20024  
Maximilian.Tondro@dc.gov  
*Attorney for Appellee DCRA*

Nefretiti Makenta  
3618 11<sup>th</sup> Street, NW  
Washington, DC 20010  
*Appellant*

Advisor Neighborhood Commission 1A  
c/o Kent Boese, Chairperson  
[1A08@anc.dc.gov](mailto:1A08@anc.dc.gov)



Meridith H. Moldenhauer

Tab A

October 9, 2017

VIA IZIS

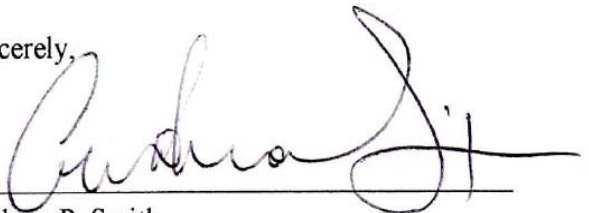
Frederick L. Hill, Chairman  
Board of Zoning Adjustment  
441 4th St NW, Suite 210S  
Washington, D.C. 20001


AGENT AUTHORIZATION FOR APPEAL NO. 19573

Chairperson Hill and Honorable Members of the Board:

This letter serves as notice that Graham Smith and Alexis Diao, and/or their assigns, authorize Cozen O'Connor, with Meridith H. Moldenhauer and Eric J. DeBear as counsel, to be their authorized agent in connection with an appeal of a building permit issued for 3616 11<sup>th</sup> Street, NW. Graham Smith and Alexis Diao are the owners of 3616 11<sup>th</sup> Street, NW, and, therefore, automatically parties to this appeal.

Sincerely,

  
\_\_\_\_\_  
Graham P. Smith

  
\_\_\_\_\_  
Alexis Diao

Tab B

**BEFORE THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**APPEAL OF  
NEFRETITI MAKENTA**

**BZA CASE NO. 19573  
HEARING DATE: OCTOBER 18, 2017**

**PROPERTY OWNERS' MOTION TO DISMISS APPEAL FOR FAILURE TO STATE A  
CLAIM AND MOTION TO STRIKE**

**I. INTRODUCTION AND STATEMENT OF FACTS**

This Prehearing Statement is submitted on behalf of Graham Smith and Alexis Diao (collectively, the “Homeowners”), the owners of property located at 3616 11<sup>th</sup> Street, NW (the “Property”), which is the subject matter of this appeal. This statement is submitted in opposition to an appeal filed by Nefretiti Makenta (the “Appellant”), the owner of 3618 11<sup>th</sup> Street, NW, concerning a decision of Matthew LeGrant, Zoning Administrator (the “Zoning Administrator”) to issue revised building permit B1707364 (the “Revised Permit”). The Revised Permit is a modification to building permit B1603868 (the “Original Permit”), which was issued by the Department of Consumer and Regulatory Affairs (“DCRA”) after the Homeowners obtained zoning relief in BZA Case No. 19387 (the “Original BZA Case”) for a third-story addition at the Property (the “Project”).

The present case is the second instance in which the Appellant has appealed a decision of the Zoning Administrator concerning permitting for the Project following the Original BZA Case.<sup>1</sup> In Appeal No. 19510 (the “First Zoning Administrator Appeal”), the Board held an approximate

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<sup>1</sup> The Appellant has also filed two, separate cases with the Office of Administrative Hearings challenging DCRA’s issuance of the Original Permit and the Revised Permit. Appellant’s case concerning the Original Permit, filed as 2017-DCRA-00027, was dismissed by Order dated July 17, 2017. The Appellant’s case concerning the Revised Permit is scheduled for an evidentiary hearing on December 6, 2017. In addition, Appellant has appealed to the D.C. Court of Appeals this Board’s Summary Order entered in the Original BZA Case. Appellant has also appealed to the D.C. Court of Appeals the Order dismissing OAH case number 2017-DCRA-00027.

These voluminous parallel cases are relevant only for the purposes of limiting the scope of this appeal and affirming that matters not germane to this case are likely to be adjudicated in another venue.

three-hour hearing on July 12, 2017 and considered extensive argument on the merits of the appeal from Appellant, DCRA and Homeowners. On July 19, 2017, the Board deliberated and granted DCRA's Motion to Dismiss the First Zoning Administrator Appeal by a unanimous vote of 4-0-1. *See* 7/19/17 Hearing Transcript, 11:14-12:3.

The facts of this matter have not changed since the Board's dismissal of the First Zoning Administrator Appeal. As part of the First Zoning Administrator Appeal, the Homeowners and DCRA outlined that the Zoning Administrator validly authorized issuance of the Original Permit. *See* Appeal No. 19510, Exhibit Nos. 25, 31, 33.<sup>2</sup> During the pendency of the First Zoning Administrator Appeal, the Homeowners filed a request to modify the architectural plans that were approved as part of the Original BZA Case pursuant to Subtitle A § 304.10 (the "Modification Request"). A copy of the Modification Request is attached hereto at Exhibit A. The Modification Request was submitted in order to comply with a building code requirement concerning a chimney on Appellant's property. Specifically, the Homeowners requested a modification to the Project plans in order to "cut-out" a ten-foot radius between the exterior wall of their third story addition and a chimney on Appellant's property. This "cut-out" is the only change to the Project plans approved in the Original BZA Case.<sup>3</sup> The Homeowners have turned the resulting space above the second floor roof into a small balcony.<sup>4</sup>

Under Subtitle A § 304.10, the Zoning Administrator has authority to allow modifications to architectural plans that were previously approved by the Board. On July 11, 2017, the Zoning

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<sup>2</sup> The Board may take judicial notice of BZA Appeal No. 19510, including the factual background set forth in that case, as well as all exhibits in the record for that case.

<sup>3</sup> Ironically, and perhaps illustrative of Appellant's tactics, the Homeowners revised the Project plans to incorporate the third floor cut-out because Appellant would not allow Homeowners to raise Appellant's chimney.

<sup>4</sup> As a direct result of the cut-out from the third-floor addition, the Homeowners have additional space within the Property envelope for the balcony. However, Appellant has now challenged the balcony as part of this appeal.

Administrator granted the Modification Request and authorized issuance of the Revised Permit. As will be described below, the Zoning Administrator acted in accordance with the zoning regulations and Appellant fails to carry her burden of proof to justify this appeal. It follows that this appeal should be dismissed for failure to state a claim upon which relief can be granted.

## **II. ARGUMENT**

Appellant has failed to meet her burden of proof in justifying an appeal of the Zoning Administrator's decision to authorize issuance of the Revised Permit. The Board has jurisdiction to hear and decide zoning appeals where "there is an error in any order, requirement, decision, determination, or refusal made by the Zoning Administrator or any administrative officer or body." *See* Subtitle X § 1100.2. Under Subtitle X § 1101.2, the "appellant shall have the burden of proof to justify the granting of the appeal."

The Appellant's initial statement of the issues on appeal, which is required by Subtitle Y § 302.12(g), consists of one, typed page with vague allegations about the Modification Request. Similarly, the Appellant's prehearing statement is wholly devoid of any written narrative expounding on the basis for this appeal. Instead, the Appellant relies on disparate documents pertaining to the Modification Request. *See* Exhibit Nos. 21-32. Simply put, the Appellant fails to carry her burden of proof in this appeal because the Appellant has offered no basis as to an error made by the Zoning Administrator.

Whereas, the zoning regulations are clear as to the Zoning Administrator's authority to grant the Modification Request and issue the Revised Permit. As to building permits authorized by an order of the Board, the Zoning Administrator "is authorized to permit modifications to approved plans . . . if the Zoning Administrator determines that the proposed modifications are consistent with the intent of the Board of Zoning Adjustment." *See* Subtitle A § 304.10. In



consideration of a modification request, the Zoning Administrator reviews eight criteria set forth in § A-304.10, all of which must be met before the modification request is granted. *See id.* A modification request is submitted in writing by the applicant and must outline the “type and extent” of the proposed modifications to the approved plans. *See* Subtitle A §304.11. Finally, the applicant must serve the written request with any supporting plan documents to the parties in the applicable BZA case, including the affected Advisory Neighborhood Commission.

Here, the Homeowners complied with all requirements under Subtitle A §§ 304.10 and 304.11 to obtain a modification of the plans approved by the Board in the Original BZA Case. The Homeowners submitted the written Modification Request outlining the proposed modifications to the Project plans. *See* Tab A. The Modification Request identifies the type and extent of the proposed modification as well as a written statement explaining compliance with the criteria under Subtitle A § 304.10. Finally, the Homeowners served the Modification Request on all parties to the Original BZA Case, including Advisory Neighborhood Commission 1A and the Office of Planning.

The Zoning Administrator correctly authorized a modification to the Project plans and issued the Revised Permit pursuant to Subtitle A §§ 304.10 and 304.11. In doing so, the Zoning Administrator adhered to the zoning regulations as well as the Summary Order entered in the Original BZA Case. It follows that Appellant fails to meet her burden of proof and this appeal should be dismissed for failure to state a claim.

### **III. MOTION TO STRIKE APPELLANT’S PREHEARING STATEMENT**

While the Appellant fails to meet her burden of proof on a substantive level, the Appellant also fails to comply with certain pre-requisites in this appeal. Namely, an appellant’s supplemental documents must be filed no later than 21 days before the date of a public hearing on the appeal.

*See* Subtitle Y § 302.16. In this matter, a hearing is scheduled for October 18, 2017. Yet, Appellant filed supplemental documents on October 2, 2017, only 16 days in advance of the hearing date. Thus, the Appellant has failed to comply with the filing requirements of Subtitle Y § 302.16.

Additionally, the zoning regulations require that filings are served upon each party, or a representative of that party, in a given case. *See* Subtitle Y § 205.1. Each document must also include a signed statement called a “certificate of service” that identifies the parties served, the method of service and the date of service. *See* Subtitle Y § 205.4. Here, the Appellant did not serve the prehearing statement on each party to this appeal, nor did the Appellant include a “certificate of service” in the prehearing statement documents. Therefore, Appellant did not comply with the service requirements of Subtitle Y § 205.

As a result of these deficiencies the Homeowners respectfully request that this Board strike Appellant’s prehearing statement and exclude all evidence submitted as part of the prehearing statement, including Exhibits 21-32 in the record of this appeal.

#### **IV. CONCLUSION**

As detailed above, the Appellant has failed to meet her burden of proof on appeal as to a decision made by the Zoning Administrator. The Zoning Administrator fully complied with the zoning regulations and correctly granted the Modification Request submitted by the Homeowners. Therefore, this appeal should be dismissed for Appellant’s failure to state a claim upon which relief can be granted.

Nonetheless, should the Board determine to proceed with a full hearing on the merits of this matter, the Homeowners respectfully request to reserve the right to submit rebuttal evidence and call the following witnesses pursuant to Subtitle Y §§ 507.1 and 507.2:

1. Graham Smith, Homeowner

2. Alexis Diao, Homeowner
3. Any rebuttal witness in response to evidence submitted by Appellant, if applicable.

Respectfully Submitted,  
Cozen O'Connor



Meridith H. Moldenhauer

# EXHIBIT A



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OFFICE OF THE ZONING ADMINISTRATOR

**REQUEST FOR MODIFICATION OF PLANS APPROVED BY THE BOARD OF ZONING ADJUSTMENT**

(Pursuant to Zoning Commission Order No. 08-06F, 11 DCMR A-304.10 through A-304.13)

Building Permit Application #: B1603868 (the "Application")

Property Address: 3616 11th Street, NW (the "Property")

Square: 2829 Lot(s): 169

1. Provide the Order Number(s) (e.g., "BZA 12349") for the Board of Zoning Adjustment (the "BZA") that the property is subject to:

BZA Order No.: 19387

2. Do the building permit plans submitted differ in any way (e.g., use, building envelope, façade design, shape, or floorplans) from the plans authorized by the Order(s), including any conditions of the Order(s) and the approved plans?

- Yes. Provide a list of the proposed changes and illustrations comparing the portions of the "approved" plans that are proposed to be varied to the "proposed" plans. This should include highlighting changed features through graphic bubbling.
- No. Skip to the signature line (#7) below to complete the form.

3. Are all proposed changes identified in #2 above solely limited to minor internal floorplan or mechanical changes not involving any standards identified in subsections A-304.10(a)-(h)?

- Yes. Provide a written justification as to why the changes identified in #2 are limited to such minor internal floorplan or mechanical changes. No written request for ZA minor flexibility is required and skip to the signature line (#7) below to complete the form.
- No. Continue to the next question.

4. Are any of the changes identified in #2 covered by flexibility specifically granted by a condition(s) of the Order(s)?

- Yes, all of the changes. Provide a written justification highlighting the terms of the flexibility granted in the Order and describe how the proposed modifications are allowable pursuant to the flexibility. No written request for ZA minor flexibility is required and skip to the signature line (#7) below to complete the form.
- Yes, some of the changes. Provide a written justification that identifies which of the proposed modifications are allowable pursuant to the flexibility granted in the Order. Continue to the next question to address the remainder of the proposed modifications that are not allowable pursuant to the flexibility.
- No. Continue to the next question.

5. If the flexibility provided in the Order(s) does not cover some or all of the proposed modifications listed in the response to #2 above, or where no flexibility was provided in the Order(s), do the remaining proposed modifications qualify for the minor flexibility that the Zoning Administrator is authorized to grant under Section A-304.10?

- Yes. Provide a written request for ZA minor flexibility as required by Section A-304.10. Make sure that this request addresses each criteria provided in Section A-304.10, including the requirement that the proposed modifications are consistent with the intent of the BZA in approving the relevant Order. Continue to the next question.
- No. Skip to the signature line (#7) below to complete the form and then separately apply to the Zoning Commission for a modification pursuant to A-304.13.

6. In cases where a written request for ZA minor flexibility is submitted, all parties (including the affected ANC(s)) to the applicable BZA case listed in response to #1 must be served with a copy of the request for minor flexibility. Such a copy must include any supporting plan documents, as required by Section A-304.11. Enter the following information, including the email addresses (or mailing address if necessary) that the written request was sent to:

Date of service by Applicant: June 30, 2017 (attach a certificate of service)

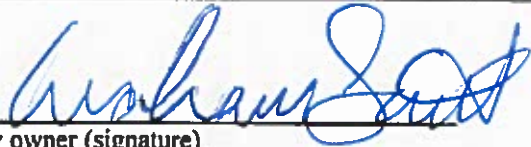
ANC 1A : Kent Boese, 1A08@anc.dc.gov

ANC(SMD) \_\_\_\_\_:

Parties: Office of Planning, Matt Jessick Matt.Jessick@dc.gov

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Signature



30 June 2017  
Date

Property owner (signature)

alexand9@gmail.com

Property owner or agent email address and phone number

*For DCRA internal use only (execute as appropriate).*

• The Zoning Administrator (ZA) has received a written request for minor modifications to approved plans related to the Order above which the Applicant attests was served on all necessary parties. The ZA has determined that the proposed modifications are consistent with Section A-304.10. Therefore, the ZA is hereby providing written notice of **APPROVAL**.

Pursuant to A-304.12, the ZA shall send written notification of any modifications approved pursuant to A-304.10 to all parties to the applicable case no later than 7 days after the date of approval.

\_\_\_\_\_  
Zoning Administrator signature

\_\_\_\_\_  
Date of approval

Date of Service: \_\_\_\_\_

cc: All parties identified in #6 above

Attachments: Applicant's written request for ZA minor flexibility and supporting documents

• No written request for ZA minor flexibility is required.

\_\_\_\_\_  
OZA signature

\_\_\_\_\_  
Date of approval

• The ZA **DENIES** the request for minor modifications to approved plans as inconsistent with Section A-304.10.

\_\_\_\_\_  
OZA signature

\_\_\_\_\_  
Date of denial

June 30, 2017

**Meridith H. Moldenhauer**

Direct Phone 202-747-0763  
Direct Fax 202-683-9389  
mmoldenhauer@cozen.com

Department of Consumer and Regulatory Affairs  
Office of the Zoning Administrator  
1100 4<sup>th</sup> Street, SW  
Washington, DC 20024

**RE: Request for Modification of Plans Approved by the Board of Zoning Adjustment – 3616 11<sup>th</sup> Street, NW**

Dear Mr. LeGrant:

On behalf of Graham Smith and Alexis Diao (the “Owners”), please find enclosed a Request for Modification of Plans Approved by the Board of Zoning Adjustment concerning the Owners’ property located at 3616 11<sup>th</sup> Street, NW (the “Property”). In December 2016, the Board of Zoning Adjustment entered a Summary Order in BZA Case No. 19387 granting Owners zoning relief to construct a third-story addition at the Property (the “Order”). A copy of the approved plans submitted to the BZA are attached at Tab A; a copy of the Order is attached at Tab B. Accordingly, the Owners applied for and obtained from DCRA building permit B1603868 to construct the addition.

The Owners request a modification of the approved plans to account for a neighboring property owners’ chimney.<sup>1</sup> Specifically, the Owners seek to modify the approved plans in order to maintain a minimum distance of 10 feet between the exterior of Owners’ third-story addition and neighboring property owner’s’ chimney. The only change to the approved plans is a cut-out/reduction of 7 feet on the third-story addition.

The proposed modification qualifies for minor flexibility that the Zoning Administrator is authorized to grant pursuant to Subtitle A § 304.10 of the zoning regulations. The proposed modification meets the criteria set forth in Subtitle A § 304.10 as follows:

*(a) The modifications do not violate any condition of approval included in the Order;*

The Order includes the standard BZA conditions approving an application for zoning relief. The proposed modifications will not violate any of these conditions.

*(b) The modification will not increase, expand, or extend any area of relief granted by the Order;*

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<sup>1</sup> The Owners requested permission to raise the neighboring property owner’s chimney, but that request was denied. Raising the chimney would have obviated the need for this modification request.

The Order grants special exception relief from the building height requirement (Subtitle E § 303.3) and for the alteration of a rooftop turret (Subtitle E § 206.2). The proposed modification will not increase, expand, or extend either areas of relief. The proposed modification includes an internal 7-foot cut-out that will not affect the building height or the altered turret.

*(c) The modification will not create any need for new relief;*

The proposed modification reduces the gross floor area on the third-story addition. The proposed modification will not alter any other aspect of the home, and will not require new relief from the BZA.

*(d) The modification will not change a principal use from that approved in the Order;*

The proposed modification will not change the Property's use as a residential flat.

*(e) The modification will not increase the number of stories;*

The proposed modification will not add a story to the Property.

*(f) The modification will not increase by more than two percent (2%) the building gross floor area, the percentage of lot occupancy, building height or penthouse height; provided that the permitted increase of two percent (2%) or less must be the direct result of structural or building code requirements;*

As noted above, the proposed modification will decrease the building's gross floor area. The proposed modification will not alter the lot occupancy, building height or penthouse height, as the project does not have a penthouse.

*(g) The modification will not increase by more than two percent (2%) the number of dwelling units, hotel rooms, or institutional rooms within the approved square footage;*

The building will remain a flat, and the proposed modification will not increase the number of dwelling units at the Property.

*(h) The modification will not increase or decrease by more than two percent (2%) the number of parking or loading spaces depicted on the approved plans.*

The proposed modification will not alter the number of parking or loading spaces at the Property.



Accordingly, pursuant to Subtitle A § 304.10, the Owners formally request a modification to the plans that were approved by the BZA. As outlined above, the Owners satisfy the requirements of § 304.10 and approval of the modification can be granted without further BZA review or relief. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR



By: Meredith H. Moldenhauer

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of June, 2017, a copy of the foregoing Request for Modification of Plans Approved by the Board of Zoning Adjustment with attachments and supporting plan documents were served, via electronic mail, on the following:

District of Columbia Office of Planning  
1100 4<sup>th</sup> Street SW, Suite E650  
Washington, DC 20024  
[Matt.Jessick@dc.gov](mailto:Matt.Jessick@dc.gov)

Advisory Neighborhood Commission 1A  
c/o Kent Boese, Chairperson  
[1A08@anc.dc.gov](mailto:1A08@anc.dc.gov)



Meridith H. Moldenhauer

TAB A



3553 11TH LOOKING EAST



3553 11TH LOOKING WEST



OTIS AT 11TH LOOKING WEST



3562 11TH LOOKING NORTH



3612 11TH LOOKING SOUTH WEST



10TH AT OTIS LOOKING NORTH



3646 11TH LOOKING EAST



3624 11TH LOOKING EAST



OTIS AT 13TH LOOKING EAST



# BZA Submission

3616 11th Street, NW  
Washington, DC 20010

1428 U STREET, NW SUITE B100 WASHINGTON, DC 20009 T: 202.223.7059 [www.gronningarchitects.com](http://www.gronningarchitects.com)

11.21.2016 | NEIGHBORHOOD CONTEXT

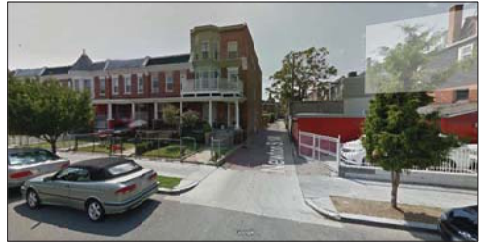
NOT TO SCALE | PAGE 7



3606 11TH STREET NW



1369 MONROE ST NW



1374 NEWTON ST NW



1428 MONROE ST NW



1350 OTIS PLACE NW



3369 13TH ST NW



# BZA Submission

3616 11th Street, NW  
Washington, DC 20010

1428 U STREET, NW SUITE B100 WASHINGTON, DC 20009 T: 202.223.7059 www.gronningarchitects.com

11.21.2016 PRECEDENT

NOT TO SCALE | PAGE 8



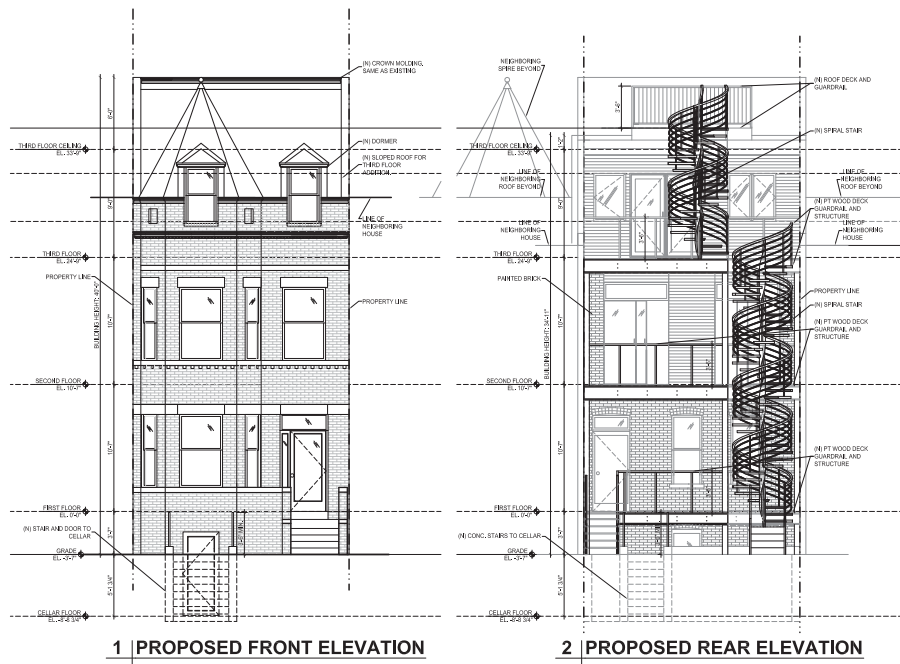
**3600 BLOCK OF 11<sup>TH</sup> STREET- NEIGHBORHOOD CONTEXT**

**3602 11<sup>th</sup> Street NW and 3604 11<sup>th</sup> Street NW**



3615 11<sup>th</sup> Street NW (Across the street from subject property)





# BZA Submission

3616 11th Street, NW  
Washington, DC 20010

1428 U STREET, NW SUITE B100 WASHINGTON, DC 20009 T: 202.223.7059 www.gronningarchitects.com

12.14.2016 PROPOSED ELEVATIONS

\* ALL PLANS AND MATERIALS ARE FOR CONCEPT REVIEW ONLY AND SUBJECT TO CHANGE

SCALE: 1/8" = 1'-0" PAGE 5















**TAB B**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19387 of Graham Smith and Alexis Diao**, as amended<sup>1</sup> pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the rooftop/upper floor addition requirements of Subtitle E § 206.2, and the height requirements of Subtitle E § 303.3, to permit the renovation of a flat in the RF-1 Zone at premises 3616 11th Street, N.W. (Square 2829, Lot 169).

**HEARING DATE:** December 14, 2016

**DECISION DATE:** December 21, 2016

**SUMMARY ORDER**

**SELF-CERTIFICATION**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 6 – original, Exhibit 66 - revised.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on November 9, 2016, at which a quorum was present, the ANC voted 6-3-0 to support the application. (Exhibit 56.)

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<sup>1</sup>At the hearing of December 14, 2016, the Applicant amended the application by removing the special exception relief from Subtitle U §§ 320.2 and 320.2(a) related to conversion, and changing it to a special exception under Subtitle E § 206.2 to permit the modification of an existing roof top architectural element and § 303.3 to permit a dwelling 40 feet in height, and by removing from the original request the variance from the 900 square feet per dwelling unit requirements of Subtitle U § 320.2(d), pursuant to 11 DCMR Subtitle X, Chapter 10. (See Applicant's supplemental statement and revised self-certification at Exhibit 66.) The caption has been amended accordingly.

**BZA APPLICATION NO. 19387**  
**PAGE NO. 2**

The Office of Planning (“OP”) submitted a timely report dated December 2, 2016, recommending denial of the originally requested variance relief, but approval of the special exception relief originally requested under Subtitle U § 320.2. (Exhibit 61.) OP did not file a supplemental report addressing the amended relief.

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 60.)

At the end of the public hearing, the Board requested a post-hearing filing by the Applicant to include a revised self-certification form and updated plans with architectural refinements. The requested information was provided by the Applicant. (See Exhibit 66.)

Twenty-three letters were filed in support of the application. (Exhibits 32-54.)

Two residents from Columbia Heights testified in support of the application. One person testified in opposition to the application.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under the rooftop/upper floor addition requirements of Subtitle E § 206.2, and the height requirements of Subtitle E § 303.3, to permit the renovation of a flat in the RF-1 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle E §§ 206.2 and 303.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 66.**



**BZA APPLICATION NO. 19387**  
**PAGE NO. 3**

**VOTE: 3-0-2** (Frederick L. Hill, Carlton E. Hart, and Michael G. Turnbull (by absentee ballot) to APPROVE; Anita Butani D’Souza not participating; one Board seat vacant).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**ATTESTED BY:**   
**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** December 28, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT



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DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.