

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

BZA ORDER No. 19659

FEDERATION OF STATE MEDICAL BOARDS, INC.

RESPONSE TO OPPONENTS' MOTION TO WAIVE

I. INTRODUCTION.

This submission is written on behalf of the Federation of State Medical Boards, Inc. (the "Owner"). Sheridan Kalorama Neighborhood Council ("SKNC") and Sheridan Kalorama Historical Association ("SKHA") (collectively, the "Opponents"), have filed a Motion To Waive Subtitle Y §§ 700.2 and 700.4., the prohibition against filing a Motion for Reconsideration more than ten (10) days after issuance of the Order. The Motion is out of order, procedurally and substantively, and should be denied.

II. THE MOTION SHOULD BE DENIED ON PROCEDURAL GROUNDS.

As noted in Opponents' filing, the Board in BZA Order No. 19659, noted that the Zoning Administrator would make the eventual determination regarding the Gross Floor Area amount of the building at 2118 Leroy Place, NW (the "Building), and that "the Opponents retain the ability to challenge the eventual GFA determination by DCRA."

In making that statement, the Board was clearly referring to the Opponents' ability to file an administrative appeal of that eventual zoning decision and were not suggesting that the Opponents could or should file a Motion for Rehearing. Even if the demo permit information submitted by the Opponents could be considered to be that "eventual determination by DCRA" on the GFA amount (it is not), then the proper procedure would be to file an appeal with the BZA of

that determination, not to seek a rehearing months after issuance of the Order, while an appeal is pending at the Court of Appeals.

At any rate, the demo permit plans do not represent any such “eventual determination,” for reasons discussed in more detail below. But even if they did, these Motions should be dismissed as improper, as the Board never intended to invite motions for rehearing or reconsideration any time the Opponents mistakenly believe they have found a smoking gun regarding the Owner’s GFA number.

III. THE MOTION SHOULD BE DENIED ON SUBSTANTIVE GROUNDS.

Opponents are required to show good cause for why the Board should grant this Motion and accept a Motion for Rehearing. Opponents base their claim of good cause on the Owner’s demolition permit application plans. Opponents claim that these plans are “new evidence” which proves that the Building consists of less than 10,000 square feet of Gross Floor Area. While the Owner’s demolition permit application and plans may be evidence of something, it is certainly not evidence of the amount of the Building’s Gross Floor Area.

For its claim of good cause, Opponents rely on a square footage number from the Owner’s demo permit plans which has no connection to the technical calculation of Gross Floor Area. It appears that the Opponents understand this, as they attempt to use sleight-of-hand by pretending that the term “gross floor area” is interchangeable with “gross square footage”.¹ In addition,

¹ On Page 4 of the Motion to Waive, Opponents claim that “Condition No. 2 requires that the existing building be 10,000 sq. ft. in **gross floor area** in size (the 10,000 GSF Condition).” Why would Opponents, represented by experienced counsel, use the abbreviation “GSF” as a defined term for Gross Floor Area, other than as an attempt to obscure? “GFA” is commonly understood to stand for Gross Floor Area, while “GSF” is commonly understood to stand for gross square footage, a term not defined or used in the Zoning Regulations.

Opponents failed to submit two pieces of information (the demo permit and the demo permit application) which make it even more obvious that the 9,928 sf number has no relationship to the Building's Gross Floor Area number.

Opponents either misunderstand, or intentionally misrepresent, the fact that when an applicant files for a demolition permit in the District, an applicant is required only to indicate the square footage of the *portions of a structure* which involve demolition. The D.C. Building Code, 12-A DCMR § 106.2.1, provides that “[f]or raze or demolition, the site plan shall identify the structures or portions thereof to be demolished...”. In addition to this administrative requirement, the application form for a demolition permit asks for the “Total Square Feet of Demolition” (See demolition permit form attached as Exhibit A). The form does not request the GFA amount, and the GFA amount was not provided.

The Owner has simply responded as required to DCRA in noting that the portions of the Building which would include demolition work amount to 9,928 square feet. We have attached a letter from Cushman & Wakefield, the Owner's representative, explaining this (Exhibit B). Further evidence is in Demolition Permit No. D1900697, as the Description of Work states: “INTERIOR SELECTIVE DEMOLITION TO 1ST, 2ND, AND 3RD FLOOR OFFICE SPACE. NO STRUCTURAL. 9928 SQUARE FEET.” (Exhibit C).

IV. SUMMARY.

The Motion to Waive should be denied because Opponents have failed to show good cause for such a waiver. The “new evidence” they wish to submit has no connection to the calculation of Gross Floor Area, and as such is not relevant or probative, and certainly not sufficient to show

BZA #19659
Response to Motion to Waive

cause for a waiver of the 10-day deadline for filing a Motion for Reconsideration. Even if the evidence was on-point, a Motion for Rehearing to this Board would not be the proper action.

For these reasons, the Owner respectfully requests that the Board deny the Opponents' Motion.

Respectfully Submitted,

Martin P Sullivan

Martin P. Sullivan, Esq.

Alexandra Wilson

Alexandra Wilson, Esq.

EXHIBIT A

Menu Save Reset Cancel Help

Record Detail (This section is required)

Permit No. D1900697	Permit Type Building/Construction/Demolition/NA	Status Permit Issued
Description of Work INTERIOR SELECTIVE DEMOLITION TO 1ST, 2ND AND 3RD FLOOR OFFICE SPACE NO STRUCTURAL. 9928 SQUARE FEET		
Total Fee Invoiced 2,347.88	Total Paid 2,347.88	Balance 0.00
Opened Date 05/07/2019		

Address (This section is required)

Search Reset Clear Get Parcel & Owner Address Locator XY GIS Locator

Street # 2118	Street Name LEROY	Street Type PL	Quadrant NW
Unit Type --Select--	Unit #	Street # (end)	Start Fraction --Select--
Zip Code 20008			
Cluster 1	Neighborhood Kalorama	Ext A	
Zone R-3	ANC 2D		
Premise Phone Number			
Primary Yes			

Parcel (This section is not required)

Search Reset Clear

SSL 2531 0049	Lot 0049	Ward 2	Primary Yes
------------------	-------------	-----------	----------------

Owner (This section is not required)

Search Reset Clear

Name FEDERATION OF STATE MEDICAL BOARDS	Primary Yes		
Address Line 1 1300 CONNECTICUT AVE., NW	Phone		
Address Line 2 2118 LEROY PL NW			
Mail City WASHINGTON	Mail State DC	Mail Zip 20036	Country United States
Cell Phone 7039266738	Email HOLLENS4@VERIZON.NET	Tax Type	
Class Type	Use Code		

Professionals (This section is not required)

Search Reset Clear

License #	First Name	Middle Name	Last Name
License Type --Select--	Business Name		Phone 1
Primary Yes	Address Line 1		Phone 2
Address Line 2			
City		State	Zip Code
Email			

Agent for Owner (This section is required)

Search As Owner As Lic. Prof As Contact

Type Agent for Owner	First Name Sam	Middle Name	Last Name Hollen
Relationship --Select--	Full Name Sam Hollen		
Primary	Organization Name		

Yes Ramco of DC, Inc.

Address Line 1
3900 Jermantown Rd.

Address Line 2

Address Line 3

City: Fairfax State: VA Zip Code: 22030

Phone 1: (703) 926-6738

Phone 2

Fax

Email: HOLLENS4@VERIZON.NET

Custom Fields

AUTHORIZED AGENT

Is an Agent Authorized

Yes No I confirm that the owner name and contact information is accurate.

LANGUAGE PREFERENCE

Language Preference Other

English (Text)

DEMOLITION PERMIT

Q-Matic Number: 0 (Text)

File Room Bin No: (Text)

Plans submitted: Yes No

Job classification: C-C

Existing use of building or property: Office - B

Existing number of stories of building: 3 (Text)

Existing Stories Penthouse

Proposed use of building or property: Office - B

Proposed number of stories of building: 3 (Text)

Proposed Stories Penthouse

Construction start date: (Date)

Total Square Feet of Demolition: 9928 SQFT (Number)

(Other) Specify: (Text)

(A) Is the area of disturbed earth more than 50 Sqft. --Select--

Area of offsite drainage: (Text) SQFT (Number)

Size of Footings or Columns: (Text) (Number)

Are walls load-bearing? Yes No

Type of walls: --Select--

Roof remain: Yes No

Application Comments: (Text)

Was the Structure Built Before 1978: Yes No

Alteration and Repair cost: (Text) Amount (Number)

Please select all floors involved in proposed construction: (Text)

Payment Type: Half

EISF submitted: Yes No

Number of plans: (Text) (Number)

Related to Stop Work Order: Yes No

(Other) Specify Existing Use: (Text)

Existing Stories Plus: Basement

Existing number of dwelling units: 0 (Number)

(Other) Specify Proposed Use: (Text)

Proposed stories plus: Basement

Proposed number of dwelling units: 0 (Number)

Completion date of work: (Date)

Method of moving construction debris: Dumpster

Does the proposed work involve disturbing the earth or razing a building? No - Skip Questions (A and B)

(B) Soil erosion methods: (Text)

Number of Footings or Columns: (Text) (Number)

Is area of disturbed earth more than 5000 Sqft: No

Type of demolition: --Select--

Number of exterior walls removed: (Text) (Number)

Total Demolition cost: 98800 Amount (Number)

Expiration Date: (Date)

Removing More Than 2 Sq Ft of Lead Paint: Yes No

Is this Project being submitted for a 3rd Party Review: Yes No

Building Construction Type: TYPE V - Any Materials Permitted

GREEN BUILDING 2014

Green Building: Yes No

Owner Type: --Select--

Public Financing: Yes No

Green Building Standards: --Select--

Certification Level

Square Feet of Site Disturbed

 (Number)

Aggregate Area of Construction/Renovation

 (Number)

Square Feet of Building

 (Number)

DDEE ENVIRONMENTAL QUESTIONS

Work performed involve the installation, removal, close-in-place now, or repair of UST system
 Yes No

Work performed involve assessm./clean-up of groundwater assoc. w/release of material from an UST
 Yes No

Does work involve drilling of well using air rotary drilling or method discharging gas/dust in air
 Yes No

Does project involve constr. of facility involv. handling of solid/medical waste/recycl. material
 Yes No

Does project involve constr. affecting aquatic/terrestrial biota and their habitat/water quality
 Yes No

Does project result in arial discharge of gases/dust or the creation of any objectionable odors
 Yes No

Does the building contain asbestos
 Yes No

Is project interior reno./add. & assessed value of structure is > 50% of the total constr. cost
 Yes No

Is project within a Special Flood Hazard Area or 100-year floodplain area
 Yes No

Does project result in constr./installation of any other stationary pollution emitting equipment
 Yes No

Date

Work performed involve assessm. of soil/soil-vapor/cleanup assoc. w/released material
 Yes No

Will proposed work involve install/drilling of wells other than for purposes in above que
 Yes No

Does project involve generation/treatm./storage/disposal/transport of hazard. chemicals
 Yes No

Does project involve constr. result. in discharge to/withdrawal from/disturb sediment in
 Yes No

Does project site contain a species of plant or animal that is federally protected
 Yes No

Was the building built before 1978 (Lead paint may be present).
 Yes No

Does the project disturb 5,000 square feet or greater of land
 Yes No

Does project's total cost exceed 100% of structure's assessed value, AND is zone other
 Yes No

Will project result in the install of fuel burning equip/boilers w/input ratings >5 million B
 Yes No

Signature
 (Text)

ENVIRONMENTAL INTAK FORM

Is this project a residential structure within R-1 through R-5-A zoning districts
 Yes No

Is this project an accessory structure, such as a garage, patio, pool, or fence
 Yes No

Is project in an Economic Development Zone, defined in DC Official Code 6-1501 (DC Law 7-177)
 Yes No

Project involve only repair, minor alt. of public facility with minor or no expans. of existing use
 Yes No

Do you plan to develop adjacent abutting property in next 3 years
 Yes No

Is this project a solid waste facility
 Yes No

Are you claiming an exemption from the requirement to submit an ESF under Title 20 7202
 Yes No

For projects with a total cost of \$1.9 million or less, check all that apply from A thru G
 Yes No

(B) Is within 100 feet of a pond, stream, lake, spring, or wetland
 Yes No

(D) Project will produce, use, or dispose of hazardous substances, as defined in 20 DCMR 7299
 Yes No

(F) Will require blasting
 Yes No

Signature of Owner or Authorized Agent
 (Text)

Is this project a single family structure not built in conjunction with 2 or more units
 Yes No

Is this project only an interior renovation with no building use or capacity change
 Yes No

Is this project in the Central Employment Area, defined in DC Zoning Regulations
 Yes No

Does the owner of this site own adjacent or abutting property
 Yes No

Do you plan more development that requires permit(s) on any site in this square in next 3 year
 Yes No

Have you prepared an EIS or a functional equivalent, as required by the NEPA act of 1969
 Yes No

Is the total project cost more than \$1.9 million, including site preparation and construction
 Yes No

(A) Contains threatened or endangered plant or animal species
 Yes No

(C) Project will produce emission of odorous, other air pollutants (from any source, including
 Yes No

(E) Will be built on land where the water table depth is less than 3 feet
 Yes No

(G) Will generate medical, infectious, radioactive, or hazardous waste
 Yes No

Date

LEAD SCREENING

What is the building structure type

How will the work affect painted components

Is the paint on components impacted by the project in intact or in deteriorating condition

If the project's in a multi family bldg, will the work occur on the same floor as an occupied unit
 Yes No

What is the total square footage of all painted surfaces that will be impacted by the work

Will there be razing or demolition activities
 Yes No

Will the work include removal of lead contaminated soil at a residen. or child-occupied facility
 Yes No

What is the approximate distance of your project from a child-occupied facility

What is the cost of the part of the project that will disturb painted surfaces

General Information

Select all floors involved in proposed construction

FP Condition

Is area of disturbed earth more than 5000 Sqft

Is this Project being submitted for a 3rd Party Review
 Yes No

Was the property under Stop Work Order (SWO) or is there a current SWO applied
 Yes No

Total work area affected by proposed construction

Yes No
Elevation Certificate Required

Yes No

Do you have a completed Flood Hazard Development Form

Yes No

Final Completion of the Project EC/FC Certificate Review

--Select--

(Text)

Flood Proofing Certificate Required

Yes No

Slab or Lowest floor EC/FC Certificate Review

--Select--

Structures *(This section is not required)*

<input type="checkbox"/> ID	Name	Group	Type	Status	Status Date	Land Use	Description	Record Status
0 record(s) found								

Submit Cancel

EXHIBIT B



2101 L Street NW, Suite 700, Washington, DC, 20036
T 202-463-2100 F 202-223-2989 cushwake.com

June 20, 2019

Mr. Marty Sullivan
Sullivan & Barros, LLP
1155 15th Street NW
Suite 1003
Washington, DC 20005

RE: 2118 Leroy Place NW
Washington, DC

Dear Marty:

A building permit was filed for from the District relative to facilitating selective demolition of interior finishes and partitions to allow the existing internal structural elements to be observed as the design proceeds. The area defined as the extent of the work for this select task is 9,928 square feet. This area was calculated as only the area where demo work is being done at this time and does not reflect the total Gross Floor Area of the building or the final area of work for the new construction scope once that is finalized and filed for plans review by DCRA. The permit – and the application form - reflect this in that they both state the affected area as 9,928 square feet and do not define the Gross Floor Area of the total building.

Cordially,

A handwritten signature in black ink that reads "Dale Martin".

Dale Martin

Managing Director

CC: FSMB

EXHIBIT C

Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



D

DEMOLITION PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL WORK IS COMPLETED AND APPROVED



PERMIT NO. D1900697

Date: 06/13/2019

Address of Project: 2118 LEROY PL NW					Zone: R-3	Ward: 2	Square: 2531	Suffix:	Lot: 0049
Permission Is Hereby Granted To: Federation Of State Medical Boards		Owner Address: 1300 CONNECTICUT AVE., NW 2118 LEROY PL NW WASHINGTON DC 20036			PERMIT FEE: \$2,347.88				
Description of Work: INTERIOR SELECTIVE DEMOLITION TO 1ST, 2ND AND 3RD FLOOR OFFICE SPACE. NO STRUCTURAL. 9928 SQUARE FEET.									
Type of Demolition:	Type of Walls:	# of Ext. Walls Removed:	Existing # of Stories: 3	Area of Disturbed Earth > 50sqft:					
Roof Remain	Existing Use: Office - B		Proposed Use: Office - B		Building Construction Type TYPE V - Any Materials Permitted			Plans:	
Agent Name: Sam Hollen		Agent Address:		Existing Dwell Units: 0	Proposed Dwell Units: 0	No. of Stories: 3	Floor(s) Involved		
<p>Conditions/ Restrictions:</p> <p>Nonstructural demolition only. Interior Work Only. Approval does not extend to any exterior work, including but not limited to alteration, replacement or installation of windows, doors, signs, window signs, vents, utility meters, mechanical units or other exterior features.</p> <p>This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year.</p> <p>All Construction Done According To The Current Building Codes And Zoning Regulations;</p> <p>As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.</p>									
Acting Director: Ernest Chrappah <i>Ernest Chrappah</i>			Permit Clerk BQUINN			Expiration Date: 06/13/2020			
<p>TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639</p> <p>To schedule a CONSTRUCTION INSPECTION or for INQUIRIES CALL (202) 442-9557</p> <p>Call Miss Utility at 811 or 1-800-257-7777 at least 48 Hours prior to excavation to obtain a ticket. //www.missutility.net/wshingtondc/dcstatelaw.asp</p>									