

EXHIBIT A

PROPERTY OWNER'S MOTION TO DISMISS

1731 Kalorama Rd NW LLC, the owner of the Property (the “**Owner**”), respectfully files this Motion to Dismiss Appeal 19896 (the “**Appeal**”) of Adams Morgan Friends & Allies (“**AMFA**”) regarding Building Permit B1800516 (the “**Permit**”) for 1731 Kalorama Road NW (Square 2563, Lot 98) (the “**Property**”). Owner’s proposed development at the Property (the “**Project**”) is matter-of-right, and the Department of Consumer and Regulatory Affairs issued the Permit based on the Project’s consistency with the Zoning Regulations. While the Appeal was filed without alleging any specific Zoning violations, Owner has attempted to work in good faith with AMFA to explain the Project and come to a resolution on the Appeal over the past six months. However, AMFA has not withdrawn the Appeal, and Owner needs to move forward with the Project. Therefore, Owner requests the Board dismiss the Appeal because:

1. AMFA does not have standing to bring the Appeal;
2. In the event the Board finds AMFA has standing to bring the Appeal, the Appeal does not state a claim based on the Zoning Regulations.

BACKGROUND

On October 9, 2018, Chris Otten (“**Otten**”) on behalf of AMFA filed the Appeal of the Permit. On December 20, 2018, Owner filed an unopposed request for postponement, noting that Owner had, unrelated to the Appeal, filed for a revised building permit for the development at the Property (the “**Revised Permit**”). Owner filed two subsequent unopposed continuances of the Appeal while the Revised Permit was pending. Owner also explained it was engaged in conversations with Otten representing AMFA regarding the Appeal and the Project.

The Project approved by the Permit and contemplated by the Revised Permit is a privately-funded all-affordable veterans' housing Project. Owner has worked with the DC Housing Authority (“DCHA”) and the Veterans' Administration (“VA”) on multiple sites within the District, including the Property. Owner has explained the intended tenants and Project plan to Otten during these discussions.

While the Revised Permit is still pending, Owner would like to move forward with some construction under the existing Permit. Additionally, while Owner hoped conversations with Otten would allow AMFA to withdraw the Appeal, because AMFA has not done so, the Owner files this Motion to allow the Project to move forward without the uncertainty of the Appeal.

STANDING

The Board should dismiss the Appeal because AMFA lacks standing as AMFA does not allege how the organization or any member is specifically aggrieved by the Permit. Pursuant to 11-Y DCMR § 302.12(f)(2), the appellant must be “aggrieved” by the administrative decision. In AMFA's Appeal statement, AMFA states generally that “Appellants are aggrieved because the project challenges the zoning regulations” and states that AMFA is made up of “nearby neighbors, including right across the street.” However, AMFA never states a particular member or address showing proximity to the Property. The Property only has one immediately adjacent neighbor, King Emmanuel Baptist Church. Notably, the Church is not a member of AMFA and has not raised objections to the Project in the Appeal.

Further, AMFA never states how its members are particularly aggrieved by the Project, but rather lists a litany of concerns related to neighborhood development generally, including “quality of life issues, affordability issues, overcrowding and parking issues, basic emergency response & safety issues.” These are generalized concerns related to overall development in the

Adams Morgan neighborhood, not grievances suffered by any member of AMFA based on the issuance of the Permit. Therefore, AMFA has not alleged with specificity how the organization or any individual member has suffered a grievance *based on* the issuance of the Permit.

FAILURE TO STATE A CLAIM

In the event the Board finds that AMFA has standing to bring the Appeal, the Board should still dismiss the Appeal for AMFA's failure to state a claim based on the Zoning Regulations. The Board has repeatedly held that its jurisdiction "to hear and decide appeals where it is alleged by the appellant that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations." *Appeal No. 19477 of Kingman Park Civic Association*, May 3, 2017, p. 4. Further, the regulations make clear that it is the Appellant's burden to prove, with evidence, that the Zoning Regulations were applied in error. *See*, 11-Y DCMR § 1101.2. The Board has previously dismissed appeals for failure to state with specificity a violation of the Zoning Regulations by the administrative officer. *See, e.g., Appeal No. 19477 of Kingman Park Civic Association*, May 3, 2017; *Appeal No. 19106 of Richard Alan Seutter, Jr., Susan T. Seutter, and Katelijn van den Berg*, Nov. 17, 2015.

Otten and AMFA have not alleged any specific violations of the Zoning Regulations. In the initial Appeal filing, AMFA alleges that "variances and special exceptions are required" without providing any evidence of that conclusion. Further, AMFA simply lists almost every Zoning category under which any development could theoretically need relief, including off-street parking, setbacks, lot occupancy, FAR, and height, among others. AMFA simply alleges incorrect facts based upon no evidence or generally assumes there are zoning violations. Further, AMFA acknowledges the Appeal is based solely on "the size of the pit being dug" and AMFA had not yet reviewed the Project plans. In fact, AMFA requests "discovery" from the BZA to

review the Project plans to determine if there are violations. Therefore, the initial Appeal filing does not allege any zoning violation with specificity sufficient to state a claim for which relief could be granted.

Plans for the Project have been provided to AMFA in the ongoing correspondence, and Owner has engaged in numerous conversations explaining the Project to Otten. AMFA has not filed any supplemental information, including the pre-hearing submission required by 11-Y DCMR § 302.16, that alleges with specificity any Zoning violations. Therefore, despite ample opportunity to review the plans for the Project, AMFA has not alleged any Zoning violation with specificity or evidence. Owner has repeatedly asked Otten to explain any Zoning issues for the Project in its correspondence, and Otten has not raised any specific Zoning violations for the Project. Therefore, AMFA has not raised with specificity or evidence any violation of the Zoning regulations by issuance of the Permit.

CONCLUSION

Owner respectfully requests the Board dismiss the Appeal because AMFA does not have standing to bring the Appeal, or, in the alternative, because AMFA failed to state a claim for which relief can be granted.