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BY EMAIL TO BZASUBMISSIONS@DC.GOV

Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210S
Washington, DC 20001

Re: Party in Opposition's Response to Applicant's Post-Hearing Submission;
BZA Case No. 21333 for 409 East Capitol Street, SE

Dear Chairperson Hill and Members of the Board,

As authorized by the Board in its September 11, 2025 Memo, on behalf of our clients, the following is response of Party in Opposition Frank Snellings and Mary Landrieu to the Applicant's October 22, 2025 Post-Hearring Submission. We address the five points in order.

1. Clarity on the Licensing for Commercial Business and Rental Property.

The Applicant's Post-Hearing submission states it is a foreign entity (limited liability company) in the District of Columbia lacking both a Certificate of Occupancy and a business license. Both of these facts show the Applicant as a property owner that has not been complaint with District law and its Regulations for a long period of time. Both the Zoning Regulations (Section A-302 of DCMR Title 11) and the DC Building Code (Section 110 of DCMR, Title 12A) require a certificate of before "any person shall use or occupy the premises or portions thereof" (see Section 301.1 of DCMR Title 11 and Section 110.3 of DCMR Title 12A).

Parasol Tree Holdings LLC purchased 409 East Capitol Street, SE ("Property") and recorded its deed with the District of Columbia ("District") on November 10, 2021. Almost *four years* have elapsed since the Applicant obtained title to the Property without coming into compliance. The Civil Infractions Act of 1985 as amended imposes the *highest* level of fine, Class 1, for the infraction of failure to obtain a certificate of occupancy from the Department of Buildings (See Section 3315.1(a) of DCMR Title 16). Similarly, the Applicant is liable for Class 1 infraction for failure to obtain a basic business license from the Department of Licensing and Consumer Protection (See Section 3301.1(u) of DCMR Title 16). Fines for each first offense Class 1 infraction exceed $2,000 (See Section 3201.1 of DCMR Title 16).

Licenses were issued to prior owners of the Property (see the attached printouts from the District's DC Scout database). There is no good cause shown for why the Applicant failed until now to attempt to come into compliance, especially with respect to the residential housing business license as well as a business license to lease the Property to commercial tenant. As explained below, the Applicant's requested compliance via a use variance for the proposed non-conforming use and lot occupancy special exception relief should not be allowed. There is no evidence of the Applicant filing for a building permit to convert the use or until the present case for zoning relief.

With respect to a certificate of occupancy ("C of O"), prior owners did not have to obtain a C of O for a single-family rental as that use is exempt from the above-cited Regulations. However, the non-conforming dry cleaner general services use did require a C of O.

Based on our review of the District's records, the following C of O were issued for commercial use on the first floor (and basement) of the Property.

Date Issued	Number	Holder Name	Trade Name	Purpose
August 16, 1960	A5725	Virginia Church	Wonder Dry Cleaners	Laundry and Cleaning Agency
May 2, 1962	B35173	Capitol Hill Cleaners & Launders Inc.	N/A	Cleaning and Laundry Agency
December 19, 2000	189500	Mrs. Ok Hee Ahn	N/A	Dry Cleaner/Pic-Up Store (1st floor & Basement)
April 25, 2016	CO1602082	Seong-Jun Kim, dba Capitol Hill Valet	Capitol Hill Valet	Dry Cleaning
August 2, 2016	CO1603226	MH Management LLC	MH Management LLC	Dry Cleaners
July 3, 2019	CO1903064	Gansukh Gantuya	Swiftness Dry Cleaners	Dry Cleaners – Pick Up Store Only

As explained below, there has been a discontinuance of use for more than three (3) years and the use variance should be denied pursuant to Section C-204.4 of the Zoning Regulations.

Section C-204.4 provides as follows:

> "Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for any period of more than three (3) years, shall be construed as prima facia evidence of no intention to resume active operation of a nonconforming use. Any subsequent use shall conform to the regulations of the zone in which the use is located."

Based on information known to the Party in Opposition, the dry-cleaning business ceased operations in June, 2020 during Covid. The Party in Opposition also knows that interior design business (not a dry cleaner) signed a lease with the prior owner of the Property in September 2020 and moved into the Property in December 2020 or January 2021. Please see the enclosed Sworn Statement from Mr. Snellings. Thus, the nonconforming dry cleaner use was discontinued from July 2020 until the present, a period of time that is more than five (5) years, two (2) years more than allowed by Regulation.

This means that the Applicant, who has shown no sufficient evidence to the contrary, must conform the use of the first floor of the Property to a residential use that conforms with the matter of right uses for the RF-1/CAP zone by converting the first floor to a second residential unit. As the Board well knows, an office use is different than service or retail use like a dry cleaner under the Zoning Regulations (and also the DC Building Code). Neither office, nor service/retail uses are allowed in the RF-1/CAP zone without satisfying the strict tests for a use variance. As explained below the Applicant has not met those tests.

2. Comments on Precedence of Bernstein v. D.C. BZA.

Based on these facts, the Applicant has misapplied the Court of Appeals ("Court") findings in *Norman Bernstein v. DC Bd. of Zoning Adjustment*, 376 A.2d 816 (D.C. 1977) ("*Bernstein*") and the series of cases that construe the Bernstein decision as well as the *Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974) ("*Clerics*"), *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164 (D.C. 1990) ("*Gilmartin*"), *The Oakland Condo v. District of Columbia Board of Zoning Adjustment*, 22 A.3d 748 (D.C. 2011) ("*Oakland*"), and *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972) ("*Palmer*") cases the Applicant cites previously in its Application Statement.

As noted above, the noncompliant dry cleaner use lapsed, and the office use was never a zoning-compliant legal use. The former commercial space is vacant. The former office tenant has not occupied the noncompliant space for months having relocated its business elsewhere.

The Applicant contends that the first floor cannot be reasonably adapted to a conforming use citing *Palmer*. The Party in Opposition do not dispute that the building built around 1900 was likely originally constructed for retail or service use with a shop (bay) window. However, other than being configured for first floor commercial no meaningful evidence has presented as to how this configuration is an exceptional or extraordinary condition that rises to the level of satisfying the confluence of factors standard.

There is nothing unusual or extraordinary about the first-floor space other than the shop window. The mere existence of the shop window does not preclude the first-floor space form be converted to residential use. The shop window can easily remain and repurposed as a bay window for a residence without modifying the exterior or involving HPRB review and approval. The Property is not constrained by use as a church, as in *Clerics*, nor is it as rooming house attempting to add more rooms as in *Oakland*. There are not significant limitations on the utility of the building as in those cases, nor is there economic harm in converting a portion of the Property into a zoning-complaint use.

The Applicant has made bald statements without supporting facts about the purported costs of conversion to residential use and a meritless statement about altering the historic façade. No architectural plans were submitted into the record showing what changes would be required for residential use. In addition, there is no economic analysis of the costs that could be reasonably incurred to support the Applicant's claim of hardship, nor is there any market analysis of the economic viability of small office use versus the demand for renovated residential apartments or the conversion of the entire structure into a renovated single-family residence. There are no facts which substantially support the bare claim of undue hardship.

Irrespective of the other supposedly similar BZA cases the Applicant cited, each property is unique, with circumstances peculiar to the applicant's property and not to general conditions in the neighborhood. and the other cases lack precedential value. Here, the singular quality of the subject Property is its shop window. The Applicant already plans to substantially renovate the rest of building by adding a third floor and expanding all floors with a rear addition to the residential portion. Converting the first-floor unit to residential will likely not exceed the cost of the addition.

In fact, there are numerous examples of former first floor commercial properties on Capitol Hill where the former commercial space is converted to residential. Please see the attached Google

photos (readily available on the internet in the public domain) of the residential uses on the ground floors of the former commercial spaces at the following properties:

1401 E Street, SE which has a recent Keil Construction conversion. This building was constructed in 1897 as dwellings over store.

101 14th Street, SE is a long-time residential use of former commercial space. The building was constructed in 1910.

252 10th Street, NE shows as residential, but it has a huge window bank typical of corner retail. The building was constructed in 1887.

713-723 F Street, NE is a row of retail stores that were converted to residential about five (5) years ago. These buildings were constructed in 1921.

821 E Capitol Street, SE is a converted ground unit store to residential use. The building was constructed in 1874 and has a large shop window.

Given the totality of these circumstances, the numerous examples of conversions of first-floor commercial use to residential and the significant absence of facts in support of the claim of undue hardship, the use variance should be denied.

3. Letter from the previous Zoning Administrator and follow-up with the current ZA.

The Applicant provided two letters: an email to the project architect dated April 27, 2022 and a letter dated April 20, 2017. Neither of these letters are dispositive on the issues at hand. The April 20, 2017 letter from the former Zoning Administrator ("ZA") concerns a grocery store as a non-conforming use. The issues and type of buildings are not analogous at all. The Property's non-conforming use is not now and has not been in the past a corner grocery store. The residential use of the Property and the matter of right lot occupancy are not in dispute either. Rather, the concerns raised by Party in Opposition and the Board's focus is on size of the lot occupancy and the non-conforming use. The former ZA's April 27, 2022 letter classifies the zone as RF-3 and is not dispositive on the issues either. The Property is in the RF-1/CAP zone. The Applicant's Post-Hearing Submission states the commercial space is 682 square feet. The enclosed C of Os for the dry cleaner use constantly say 820 or 825 square feet, which calls into question the accuracy of the Applicant's Plans.

We are not contesting that residential use will be the principal use. However, we continue to be concerned about any expansion of the lapsed nonconforming use which would require additional

variance relief. We bring the Board's attention to the ZA's comment in the 2022 letter about the allocation of accessory space for utilities. We contend that the spaces would be separately metered and utility rooms for electrical panels, mechanical hearing and cooling systems and water heater, the spaces for which must be allocated between the two uses must be properly allocated.

4. Updated plans showing rooms and windows.

While the updated plans appear to no longer appear show an extension of the exiting commercial use on the first floor, the rear elevation is not even labeled and, overall, the plans show a decided lack of detail with respect to size of openings and dimensions throughout. As mentioned above, there is also no indication of the utility rooms for each unit or square footage to be allocated. No revision has been made to size and scale of the addition to address the Party in Opposition's concerns about protecting their own and their surrounding neighbors' privacy and quiet and peaceful enjoyment of their respective properties.

5. HPRB staff report.

Please be advised that there was a lack of proper notice of the HPRB case as well. Mr. Snellings has filed requests for reconsideration with both HPRB and CHRS. The Party in Opposition and other neighbors intend to oppose the conceptual approval before both bodies.

Based on the above issues which came to light after the hearing, the Party in Opposition opposes both the Applicant's request for a special exception for increased lot occupancy and the use variance for commercial office use.

Sincerely,

Lyle M. Blanchard

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Party in Opposition's Response to Applicant's Post-Hearing Submission and its Enclosures were served on this 29th day of October, 2025, by email to the following:

ANC 6B, its Chairperson, Edward Ryder, and also to:
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