



January 25, 2018

Samantha Mazo

Direct Phone 202-747-0768
Direct Fax 202-683-9390
smazo@cozen.com

Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

**RE: BZA Case No. 19659
Party-in-Opposition Sheridan-Kalorama Neighborhood Council's Motion to
Consolidate Cases and Postpone Hearing Date or, Alternatively, Process
Cases Concurrently**

Chairperson Hill and Honorable Members of the Board:

Sheridan-Kalorama Neighborhood Council ("SKNC"), a party-in-opposition¹ to this proceeding, hereby requests that the Board consolidate this case with a related appeal recently-filed by SKNC as BZA Case No. 19719 (the "Appeal Case"). A copy of the Statement of Appeal is attached at Tab A. In conjunction with the consolidation request, SKNC also requests that the Board postpone the hearing date on this application, currently scheduled for January 31, 2018, or, alternatively, process this matter concurrently with the Appeal Case.²

The basis for this request concerns a determination by the District's Zoning Administrator on January 18, 2018 related to the type of zoning relief necessary for this application (the "January 18, 2018 Decision"). A copy of the Zoning Administrator's January 18, 2018 decision is attached at Tab B. The import of the January 18, 2018 Decision is the Zoning Administrator concluded that the Applicant, the Federation of State Medical Boards, Inc. ("FSMB, Inc."), has satisfied the threshold requirements for a special exception under Subtitle U § 203.1(n). The January 18, 2018 Decision specifically concerns the requirements under Subtitle U § 203.1(n) that the subject property be (1) an "existing residential building," and (2) the proposed use is for a "nonprofit organization." Absent meeting these threshold requirements of Subtitle U § 203.1(n), this application would be processed as a use variance, and the Applicant's burden of proof would not be met. Notably, SKNC has expressly raised these issues as part of this case, including to the Office of Planning and the Zoning Administrator. *See* Ex. No. 105.

¹ The Sheridan-Kalorama Historical Association has also been granted party status in opposition to this case. Another individual, Frederick Guinee, requested party status, but the request has not yet been considered by this Board.

² The significance of this issue was raised by the Office of Planning in its report filed at Ex. No. 110. To wit, the Office of Planning's recommendation is conditioned on the Board's "concurrence with the Zoning Administrator determination that the Applicant would qualify as a 'nonprofit organization.'"

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On January 25, 2018, SKNC filed the Appeal Case asserting that the Zoning Administrator erred in his determination that FSMB, Inc. meets the threshold requirements of Subtitle U § 203.1(n). Given the import of the Zoning Administrator's determination for this case, good cause exists for the Board to consolidate this application with the Appeal Case. In doing so, the Board may either postpone the hearing on January 31, 2018 or process the Appeal Case and the application concurrently on January 31, 2018.

We thank you for your attention to this matter and we look forward to presenting to the Board.

Sincerely,

Cozen O'Connor

A handwritten signature in blue ink, appearing to read "Samantha Mazo", written over a horizontal line.

By: Samantha Mazo

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2018, a copy of the foregoing Cover Letter with attachments was served, via electronic mail, on the following:

District of Columbia Office of Planning
c/o Anne Fothergill
1100 4th Street SW, Suite E650
Washington, DC 20024
Anne.Fothergill@dc.gov

Martin Sullivan
Sullivan & Baros
1990 M Street NW
Washington DC 20036
msullivan@sullivanbarros.com

Advisory Neighborhood Commission 2D
c/o David Bender, Chairperson
2126 Connecticut Avenue NW, Apt. 34
Washington, DC 20008
2D01@anc.dc.gov

Advisory Neighborhood Commission 2D
c/o Ellen Goldstein, SMD Commissioner
2129 Florida Avenue NW, Apt. 501
Washington, DC 20008
2D02@anc.dc.gov

District Department of Transportation
55 M Street SE, Suite 400
Washington, DC 20003
Anna.Chamberlin@dc.gov



Samantha Mazo

Tab A



January 25, 2018

Samantha Mazo

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Direct Fax 202-683-9390

smazo@cozen.com

Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

**RE: Appeal of January 18, 2018 Decision of Zoning Administrator
2118 Leroy Place NW (Lot 049, Square 2531)**

Chairperson Hill and Honorable Members of the Board:

On behalf of Appellant Sheridan-Kalorama Neighborhood Council (“SKNC”), please find enclosed the following documentation for this appeal:

1. Letter of Authorization
2. Form 125
3. Statement of Appeal with Exhibits

Pursuant to Subtitle Y § 1600.1(a)(3), non-profit citizens’ associations are not required to pay a filing fee for an appeal. Accordingly, since SKNC is a non-profit citizens’ association, no filing fee is required for this appeal.

Additionally, as outlined in the Statement of Appeal, there is a companion zoning case pending before the Board, filed as BZA Case No. 19659 (the “BZA Application”). SKNC was granted party status in opposition to the BZA Application. The issues raised in this appeal are important threshold issues that will affect the relief necessary in the BZA Application. The BZA Application is scheduled to be heard by the Board on January 31, 2018.

As such, simultaneously with the filing of this appeal, SKNC will request a consolidation of the BZA Application with this appeal. In conjunction with that request, SKNC will also request a postponement of the January 31st hearing date, or, alternatively, for the Board to concurrently process the BZA Application with this appeal. Given the import of these threshold issues, there is good cause for the Board to rule on this appeal either before or in conjunction with the BZA Application. A copy of this appeal will be filed with the motion to consolidate/request for postponement filed in the BZA Application.

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We thank you for your attention to this matter and we look forward to presenting the issues on appeal to the Board.

Sincerely,

Cozen O'Connor

A handwritten signature in blue ink, appearing to read "Samantha Mazo", written over a horizontal line.

By: Samantha Mazo

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2018, a copy of the foregoing Cover Letter with Statement of Appeal and attachments was served, via electronic mail, on the following:

Matthew LeGrant, Zoning Administrator
Maximillian Tondro, Office of General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street SW
Washington, DC 20024
Matthew.legrant@dc.gov
Maximillian.tondro@dc.gov

District of Columbia Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024
planning@dc.gov

Advisory Neighborhood Commission 2D
c/o David Bender, Chairperson
2126 Connecticut Avenue NW, Apt. 34
Washington, DC 20008
2D01@anc.dc.gov

Advisory Neighborhood Commission 2D
c/o Ellen Goldstein, SMD Commissioner
2129 Florida Avenue NW, Apt. 501
Washington, DC 20008
2D02@anc.dc.gov

Martin Sullivan
Sullivan & Baros
1990 M Street NW
Washington DC 20036
msullivan@sullivanbarros.com



Samantha Mazo



January 19, 2018

Samantha L. Mazo
Direct Phone 202-747-0768
Direct Fax 202-683-9390
smazo@cozen.com

VIA IZIS

Frederick L. Hill
Chairperson
Board of Zoning Adjustment
441 4th St. NW, Suite 210 South
Washington, DC 20001

Re: Appeal of Zoning Administrator Decision Dated January 18, 2018 to Reverse Decision of January 12, 2018 – Agent Authorization For Sheridan Kalorama Neighborhood Council

Dear Chairperson Hill & Members of the Board:

This letter serves as notice that the Sheridan Kalorama Neighborhood Council ("SKNC") has resolved to appeal the Zoning Administrator decision dated January 18, 2018 to reverse a prior decision dated January 12, 2018 regarding the property located at 2118 Leroy Place, NW.

SKNC has approved to retain Cozen O'Connor, with Meridith Moldenhauer and Samantha Mazo as counsel, to be the authorized agent in connection with the Appeal before the Board of Zoning Adjustment.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Mazo", written over a horizontal line.

By: Samantha L. Mazo

SLM

LEGAL\33323749\1



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



FORM 125 - APPEAL

Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated.

Pursuant to **CE** of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the

administrative decision of: Matthew LeGrant, Zoning Administrator Name of administrative officer and title

made on Date of decision January 18, 2018 **that states**

Threshold requirements for special exception relief under Subtitle U-203.1(n)

Address(es) of Affected Premises	Square(s)	Lot(s)	Zone Districts
2118 Leroy Place NW	2531	0049	R-3

Present use of Property: Chancery

Proposed use of Property: Office

Name of Owner of Property: Federation of State Medical Boards, Inc.

Address: 2118 Leroy Place NW

Phone No(s): 2025031704 **Fax No.:** **E-Mail:**

Name of Lessee:

Address:

Phone No(s): **Fax No.:** **E-Mail:**

Name of Appellant, if other than Owner: Sheridan-Kalorama Neighborhood Council

Address: 1200 19th Street NW, 3rd Floor, Washington, DC 20036

Phone No(s): 2027470768 **Fax No.:** **E-Mail:** smazo@cozen.com

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this appeal is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both. (D.C. Official Code § 22-2405)

Date: 1/25/2018 **Signature of Appellant*:** Samantha Mazo

Waiver of Fee - Status of Appellant

ANC DC Government Agency NCPCC Citizens' Association/Association created for civic purposes that is not for profit

To be notified of hearing and decision (Appellant or Authorized Agent*):

Name: Samantha Mazo

Address: 1200 19th Street NW, 3rd Floor, Washington, DC 20036

Phone No(s): 2027470768 **Fax No.:** **E-Mail:** smazo@cozen.com

** If an appeal is filed by the agent of the Appellant, Form 125 - Appeal shall be accompanied by a letter signed by the Appellant authorizing the agent to act on its behalf in this appeal.*

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

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

**APPEAL OF
SHERIDAN-KALORAMA
NEIGHBORHOOD COUNCIL**

2118 LEROY PLACE NW

**PRELIMINARY STATEMENT REQUESTING REVERSAL OF A
ZONING ADMINISTRATOR DECISION**

I. INTRODUCTION

This preliminary statement is filed on behalf of Appellant Sheridan Kalorama Neighborhood Council (“SKNC”)¹, in support of its appeal of the January 18, 2018 decision of Matthew LeGrant, Zoning Administrator for the District of Columbia (the “Zoning Administrator”) (the “January 18, 2018 Decision”). Copies of the January 18, 2018 Decision and transmission email to SKNC are attached here at Exhibit “A”.

The January 18, 2018 Decision was made on incomplete facts and effectively determines the type of zoning relief necessary in a separate zoning case – BZA Case No. 19659 (the “BZA Application”) – in which the Federation of State Medical Boards, Inc. (“FSMB, Inc.”) has sought relief to locate its offices in the R-3-zoned property at 2118 Leroy Place NW pursuant to Subtitle U § 203.1(n). SKNC, and another well-established neighborhood group, the Sheridan Kalorama Historical Association, have been granted party status in opposition to the BZA Application. The public hearing on the BZA Application is scheduled for January 31, 2018.

The import of the January 18, 2018 Decision is the Zoning Administrator’s conclusion that FSMB, Inc. had satisfied the threshold requirements for a special exception under Subtitle U

¹ As set forth in the advance party status request in the BZA Application, which is attached here at Exhibit “B”, SKNC has served the Sheridan-Kalorama neighborhood for more than 50 years, and works to rehabilitate and enhance its residential nature. Its efforts have been successful in preserving residential uses throughout the neighborhood.

§ 203.1(n). SKNC challenges this determination on both the facts and the law for the reasons set forth below. Instead, SKNC argues that the January 18, 2018 Decision was issued in error, and FSMB, Inc. does not satisfy the threshold requirements for a special exception under Subtitle U § 203.1(n). Consequently, use variance relief would be necessary to locate FSMB, Inc.'s offices on the Property. Due to the critical importance of the Board's determination of this appeal prior to its decision on the BZA Application, SKNC requests that the Board consolidate this appeal with the BZA Application, and either postpone both proceedings or process this appeal concurrently with the January 31, 2018 public hearing on the BZA Application.

Jurisdiction

The Board of Zoning Adjustment is authorized to hear this appeal pursuant to Subtitle Y § 100.4 of the 2016 Zoning Regulations ("ZR-16").

Standing

SKNC has standing to bring this appeal as a "person aggrieved" pursuant to Subtitle Y § 302.1 of ZR-16. SKNC is a non-profit neighborhood association comprised of residents in the District's Sheridan Kalorama neighborhood who seek to maintain and preserve the residential quality of that neighborhood. As stated above, SKNC has been granted party status in the BZA Application, and a copy of the January 18, 2018 decision was sent to SKNC. The January 18, 2018 Decision will aggrieve SKNC because, if upheld, the decision will allow the BZA to restrict its review of the BZA Application to the special exception standards set out in Subtitle U § 203.1(n). As discussed at length in SKNC's January 18, 2018 pre-hearing statement in the BZA Application attached here at Exhibit "C", there is ample evidence that FSMB Inc. does not satisfy the threshold requirements to be eligible for the Subtitle U § 203.1(n) special exception.

Timeliness

This appeal was timely filed pursuant to Subtitle Y §302.2 of ZR-16 because SKNC became aware of the Zoning Administrator's decision on January 18, 2018, and this appeal is being filed less than sixty days from that date.

II. STATEMENT OF THE LAW

The critical issue is whether FSMB, Inc. satisfies threshold requirements of Subtitle U § 203.1(n) to make its office use eligible for approval through a special exception. If it is determined that the special exception requirements are not satisfied, then FSMB, Inc.'s office use is not permitted in the zone, and use variance relief would be necessary.

Subtitle U § 203.1(n), states:

Use of existing residential buildings and the land on which they are located by a **nonprofit organization** for the purposes of the **nonprofit organization**: (1) If the building is listed in the District of Columbia's Inventory of Historic Sites or, if the building is located within a district, site, area, or place listed on the District of Columbia's Inventory of Historic Sites; (2) If the gross floor area of the building in question, not including other buildings on the lot, is ten thousand square feet (10,000 sq. ft.) or greater; (3) The use of existing residential buildings and land by a nonprofit organization shall not adversely affect the use of the neighboring properties; (4) The amount and arrangement of parking spaces shall be adequate and located to minimize traffic impact on the adjacent neighborhood; (5) No goods, chattel, wares, or merchandise shall be commercially created, exchanged, or sold in the residential buildings or on the land by a nonprofit organization, except for the sale of publications, materials, or other items related to the purposes of the nonprofit organization; and (6) Any additions to the building or any major modifications to the exterior of the building or to the site shall require approval of the Board of Zoning Adjustment after review and recommendation by the Historic Preservation Review Board with comments about any possible detrimental consequences that the proposed addition or modification may have on the architectural or historical significance of the building or site or district in which the building is located; (emphasis added).

Based on many well-accepted doctrines of regulatory interpretation, including “the Whole Act Rule,” the Board is simply not permitted to ignore or “write out” the threshold

requirements of Subtitle U § 203.1(n), specifically that the subject building is an “existing residential building” and that the proposed use be conducted by a “nonprofit organization.” *See United States v. Fisher*, 6 U.S. 358 (1805) (applying the “whole act rule,” which has evolved to holdings that find “any attempt to segregate any portion or exclude any other portions from consideration is almost certain to distort the [regulatory] intent.” 2A Southerland § 47.02).

The authority of the Zoning Administrator is derived from the Mayor, who is statutorily authorized to administer and “enforce the [zoning] regulations adopted under the authority of” the District’s Zoning Act. *See* D.C. Code § 6-641.10; *see also* Subtitle A § 300.1. Yet, the Zoning Administrator’s authority is not limitless. For instance, the Board may overturn the Zoning Administrator where the Zoning Administrator’s decision is not based on “complete and accurate information.” *See Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 974 (2002) (upholding Board’s ruling to overturn Zoning Administrator’s decision). Further, the Zoning Administrator does not have authority to, effectively, change the zone plan through his determinations. *See* BZA Case No. 19441, 5/17/17 hearing transcript, pgs. 282-283, 287 (order pending).

III. STATEMENT OF FACTS²

On October 23, 2017, FSMB, Inc. filed the BZA Application seeking variance³ and special exception relief, pursuant to Subtitle U § 203.1(n). On December 6, 2017, the Appellant herein, SKNC, was granted party status in opposition to the BZA Application. The BZA

² All filings discussed in the Statement of Facts were filed in the BZA Application, which is technically a separate, but related process from the January 18, 2018 Decision.

³ FSMB, Inc. initially requested variance relief because it did not meet one of the factors in the special exception test – that the former Colombian Chancery Building at 2118 Leroy Place (the “Chancery Building”) has a gross floor area of greater than 10,000 square feet. *See* Subtitle U § 203.1(n)(2). Later, FSMB, Inc. removed the variance relief claiming that it meets this condition of the special exception test. While SKNC challenges this claim as part of the BZA Application, the issue is not relevant to this appeal.

Application hearing was originally scheduled for December 22, 2017, but was postponed at FSMB, Inc.'s request to January 31, 2018.

During the BZA Application review process, questions were raised as to whether FSMB, Inc.'s use satisfies the threshold requirements of Subtitle U § 203.1(n), specifically, whether (1) the Property is an "existing residential building," and (2) whether FSMB, Inc. is a "nonprofit organization" as that term is defined in the Zoning Regulations.⁴

On January 12, 2018, Anne Fothergill, the Office of Planning representative reviewing the BZA Application, requested a determination by the Zoning Administrator as to these two threshold issues. A copy of Ms. Fothergill's January 12th email is attached at Exhibit "D". On January 12, 2018, the Zoning Administrator replied to Ms. Fothergill's request, which is included in the attachment at Exhibit "D". Thereafter, by letter dated January 16, 2018, FSMB, Inc. asserted to the Zoning Administrator that it meets the two threshold requirements for special exception relief under Subtitle U §203.1(n) (the "FSMB, Inc. Letter"). A copy of FSMB, Inc.'s January 16th letter is attached at Exhibit "E".

In response to the information contained in the FSMB, Inc. Letter, the Zoning Administrator issued the January 18, 2018 Decision stating that the Zoning Administrator "withdraws" the January 12, 2018 email, and FSMB, Inc. does, in fact, qualify for relief under Subtitle U § 203.1(n). *See* Exhibit "A". In the January 18, 2018 Decision, the Zoning Administrator found as follows:

- (1) Relying on *French v. D.C. Bd. of Zoning Adjustment*, as provided by FSMB, Inc., the Zoning Administrator determined that the Chancery Building qualifies as an "existing residential building"; and
- (2) Relying on "Articles of Incorporation" also provided by FSMB, Inc., the Zoning Administrator concluded that FSMB, Inc. "appears to meet the

⁴ SKNC does not take issue with the process by which the Zoning Administrator made the January 18, 2018 Decision.

requirements of a ‘non-profit organization’ as defined by the Zoning Regulations. . .” See Exhibit “A”.

IV. ISSUES ON APPEAL

In concluding that FSMB, Inc. satisfied important threshold requirements for the BZA Application to be processed as a special exception standard under Subtitle U §203.1(n), the Zoning Administrator erred in his interpretation of the Zoning Regulations’ definition of “existing residential building” and “nonprofit organization.”

A. The Zoning Administrator Erred in Determining that the Chancery Building is an Existing Residential Building

The Zoning Administrator incorrectly determined that the Chancery Building constitutes an “existing residential building” by relying solely on the *French* case and misapplying the Zoning Regulations.

The Zoning Administrator exclusively relies on a Court of Appeals case, *French v. D.C. Bd. of Zoning Adjustment*, and interprets that case to hold that the definition of an “existing residential building” constitutes “any building in a residential zone,” and not “buildings actually used for residential purposes.” See Exhibit “A”. The Zoning Administrator’s reliance on the *French* case is misguided for two reasons. First, each zoning application is determined on a case-by-case basis, and what is correct in one case may not apply to another. See *French v. D.C. Bd. of Zoning Adjustment*, 658 A.2d 1023, 1033 (1995); see also *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (1972). For the Zoning Administrator to conclude that the “issue is governed” by *French* would be to ignore this long-standing precedent.

Second, in the *French* case, the Court of Appeals’ ruling was extremely deferential to the Board of Zoning Adjustment’s interpretation in the underlying case, and, as such,

the Court's opinion should not govern the matter at hand. Indeed, in that case, the *French* Court went so far as to state:

We uphold the Board's construction of section 217.1 for two primary reasons. First, as we have mentioned, this court must accept the Board's interpretation of the zoning regulations unless that interpretation is plainly erroneous or inconsistent with the regulation itself. *Concerned Citizens, supra*, 634 A.2d at 1242. Since the actual language of the regulation could reasonably be read either as the Board reads it or as petitioners read it, we must accept the Board's interpretation. *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843, 104 S.Ct. 2778, 2781-2782, 81 L.Ed.2d 694 (1984); *Udall v. Tallman*, 380 U.S. 1, 16-17, 85 S.Ct. 792, 801-802, 13 L.Ed.2d 616 (1965); *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414, 65 S.Ct. 1215, 1217, 89 L.Ed. 1700 (1945); *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Commission*, 431 A.2d 560, 565 (D.C.1981). Indeed, it is in these types of situations—when the language used in the regulation is less than precise that the Board's construction is most useful, for it is the Board's duty to assure that special exceptions are issued in a manner that is “in harmony with the general purpose and intent of the Zoning Regulations.” 11 DCMR § 3108.1. *See French*, 658 A.2d 1033.

The Court's language above most certainly was not intended to be applied indiscriminately to all applications for non-profit office uses in residential areas. Importantly, the *French* court specifically limited its interpretation of the “existing building” language to ensure that it was not applied in this broad-based manner, expressly stating,

[s]ince applications for special exceptions under section 217.1 are not granted as a matter of right but are evaluated on a case-by-case basis, there is little danger that the issuance of a special exception in this case will establish a precedent permitting a flood of non-profit organizations into any particular zoning district. Rather, the careful and thorough scrutiny given by the Board to the application in this case reflects the nature of the burden which any applicant must satisfy when seeking a special exception. *See French*, 658 A.2d 1033.

Accordingly, even based on the Court's own language in *French*, the Zoning Administrator's decision to broadly interpret “existing residential building” to include the Chancery Building –

which FSMB Inc. stated had been used non-residentially for decades – should be disregarded. This portion of the January 18, 2018 Determination is an express and incorrect broadening of the Court’s decision in *French* and was in error.

Further, the January 18, 2018 Determination is directly contrary to the Zoning Regulations themselves that specifically state a chancery use is *not* residential in nature. It is undisputed that the Chancery Building is a vacant, non-residential building that was most recently used as a chancery for the Colombian government. See Exhibit “C”. The Zoning Regulations define a “chancery” use as follows:

- (a) The principal offices of a foreign mission used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), including the site and any building on such site that is used for such purposes; and
- (b) Exceptions: This use category **does not** include uses **which would typically fall within the office or residential use** categories, such as an ambassador’s residence or embassy staff residence building. See Subtitle B § 200.2(g) (emphasis added).

In the January 18, 2018 Decision, the Zoning Administrator does not reference the use category definition of “chancery,” nor does he explain why he did not apply that definition in determining whether the Property is an “existing residential building.” The Zoning Administrator erred by failing to apply the definitions set forth by the Zoning Regulations to the special exception standard under Subtitle U § 203.1(n).

Accordingly, the Zoning Administrator erred in the determination that the Chancery Building is an “existing residential building” as that term is used in Subtitle U § 203.1(n).

B. The Zoning Administrator Erred in Determining that FSMB, Inc. Qualifies as a Nonprofit Organization

The Zoning Administrator erred in determining that FSMB, Inc. is a “nonprofit organization” and meets the second threshold issue under Subtitle U § 203.1(n). The January 18,

2018 Decision is based exclusively on the form language in FSMB, Inc.’s “Articles of Incorporation,” provided as an exhibit to the FSMB, Inc. Letter. In so doing, the Zoning Administrator does not reference other, extensive evidence documenting that FSMB, Inc. is a business league and not a “nonprofit organization” as that term is defined by the Zoning Regulations. Specifically, in the BZA Application, FSMB, Inc. does not directly contend that it satisfies the Zoning Regulations’ “nonprofit organization” definition and SKNC provided evidence that the definition is not satisfied. However, it appears that the Zoning Administrator’s decision is based solely on the information provided in the FSMB, Inc. Letter, which is incomplete, and it is not known whether the Zoning Administrator reviewed other evidence in the BZA Application record.

Due to the apparent lack of complete information before the Zoning Administrator, this case is similar to the Board’s reversal of building permits that was upheld by in the *Sisson* case. In that case, the Court agreed with the Board’s finding that the “Zoning Administrator erred in issuing the [building permits to Mr. Sisson because] the Zoning Administrator’s decisions were not based on complete and accurate information...” *See Sisson at 974*. That same common sense application should apply here.

Further, the Zoning Administrator’s reliance on two BZA cases ignores that the great majority of cases where the BZA has only granted relief for 501(c)(3) organizations. *See BZA Case Nos. 16762, 16853, 16974, 17302, 18604, 18315, 18969*. Indeed, in BZA Case No. 18604, the Board conditioned its approval as follows,

The Property shall be used only for a 501(c)(3) nonprofit organization focused on the fields of fine arts, cultural understanding, global resilience (including the fields of science, technology, business, innovation and emergency response), and medical or pharmaceutical research.

The cases on which the Zoning Administrator relies, BZA Case Nos. 17985 and 19131, are easily distinguishable because in those cases the subject non-profits were already located in the respective neighborhoods and were merely expanding to adjacent buildings. That is an entirely different situation from the one at hand, where FSMB, Inc. has no current presence on Leroy Place and its office use would significantly alter the character of the neighborhood.

Because the decision was based on incomplete information and incorrect application of previous Board precedent, the Zoning Administrator erred in the determination that FSMB, Inc. qualifies as a “nonprofit organization” as that term is used in Subtitle U § 203.1(n).

V. POTENTIAL FACT WITNESSES IN SUPPORT OF APPEAL

-Chris Chapin, President of Appellant SKNC

-John Sukenik, member of Appellant SKNC

Mr. Chapin and Mr. Sukenik will testify regarding the existing non-residential uses of the Chancery Building and publicly-available information on FSMB, Inc.’s uses.

VI. EXPERT WITNESSES IN SUPPORT OF APPEAL

-Ellen McCarthy as an expert in land use. Resume attached at Exhibit “F”.

-To be determined expert in non-profit organizations.

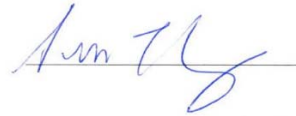
Ms. McCarthy will provide expert testimony on the interpretation of the threshold requirements of Subtitle U § 203.1(n). The to be determined expert in non-profit organization will testify regarding FSMB Inc.’s non-compliance with the Zoning Regulations’ definition of “nonprofit organization.”

VII. CONCLUSION

The Zoning Administrator erred in determining that the Chancery Building at the Property meets the definition of an “existing residential building,” and FSMB, Inc. qualifies as a

“nonprofit organization” under the Zoning Regulations. Therefore, the Zoning Administrator’s decision in the January 18, 2018 Decision is in error and should be reversed. As this matter pertains to a critical threshold decision regarding the relief necessary in the BZA Application, SKNC further requests that this appeal be consolidated with the BZA Application, and that both cases be postponed or that both cases are heard concurrently on January 31, 2018.

Respectfully submitted,
COZEN O’CONNOR

A handwritten signature in blue ink, appearing to read "Samantha L. Mazo", written over a horizontal line.

Samantha L. Mazo

Exhibit A

DeBear, Eric J.

From: Mazo, Samantha L.
Sent: Friday, January 19, 2018 2:55 PM
To: DeBear, Eric J.
Subject: FW: Response to Apparent Determinations on 2118 LeRoy Place NW - BZA # 19659
Attachments: RE: BZA Case 19659

Importance: High



Samantha Mazo
Of Counsel | Cozen O'Connor
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[Email](#) | [Bio](#) | [Map](#) | [cozen.com](#)

From: Tondro, Maximilian (DCRA) [mailto:maximilian.tondro@dc.gov]
Sent: Thursday, January 18, 2018 10:31 PM
To: Mazo, Samantha L. <SMazo@cozen.com>
Cc: Moldenhauer, Meridith <MMoldenhauer@cozen.com>
Subject: Fw: Response to Apparent Determinations on 2118 LeRoy Place NW - BZA # 19659
Importance: High

Samantha,

I apologize for not responding earlier - please see the attached email stating our position to Marty and to OP. If you have any questions, please let me know.

Best,
Max

Maximilian L.S. Tondro | Assistant General Counsel
Office of the General Counsel
Government of the District of Columbia
Department of Consumer & Regulatory Affairs
1100 4th Street, SW, 5th Floor | Washington, DC 20024
Phone: (202) 442-8403 maximilian.tondro@dc.gov Fax: (202) 442-9477
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From: Tondro, Maximilian (DCRA)

Sent: Thursday, January 18, 2018 10:28 PM

To: Martin Sullivan

Cc: Fothergill, Anne (OP); Alexandra Wilson; LeGrant, Matt (DCRA)

Subject: RE: Response to Apparent Determinations on 2118 LeRoy Place NW - BZA # 19659

Mr. Sullivan,

I am responding on behalf of Mr. LeGrant, the Zoning Administrator (“**ZA**”), to your below email and its attached documents, which you sent in response to the attached January 12, 2018 email from the ZA to Ms. Fothergill at the Office of Planning (the “**ZA email**”) regarding whether your client qualified for relief under Section U-203.1(n) (quoted below). The ZA has found your email and its attachments persuasive and hereby withdraws the ZA email for the following reasons.

The ZA email responded to two issues raised by the counsel for opponents of your client's BZA application (19659) regarding Section U-203.1(n) which authorizes special exception relief for the “Use of existing residential buildings and the land on which they are located by a nonprofit organization for the purposes of the nonprofit organization ...”. The two issues raised were:

- (1) does the prior use of your client's property at 2118 Leroy Place NW as a chancery bar the property from qualifying as an "existing residential building"; and
- (2) does your client's status as a IRC 501(c)(6) entity qualify it as a "nonprofit organization" as considered by the Zoning Regulations, or is that term limited to IRC 501(c)(3) entities?

1 - "Existing residential building" -

The ZA agrees with your assertion that this issue is governed by *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1033 (1995), where the D.C. Court of Appeals upheld the BZA's established interpretation of "existing residential building" to include any building in a residential zone and not the more restrictive interpretation that this term only included buildings actually used for residential purposes. Therefore the ZA withdraws his prior statement in the ZA email that focused on the actual prior use of your client's property.

2 - "non-profit organization" -

Having reviewed the Articles of Organization of your client, the ZA concurs that your client, which "is organized exclusively for scientific and educational purposes," appears to meet the requirements of a "non-profit organization" as defined by the Zoning Regulations as an organization "organized ... and operated exclusively for ... scientific ... or educational purposes". The Zoning Regulations' definition of "non-profit organization" does not refer to any particular type of IRS-recognized nonprofit organization, and the BZA has not established any ruling that Section U-203.1(n) only applies to 501(c)(3) entities or does not apply to 501(c)(6) entities. Furthermore, as you have indicated, the BZA has previously granted this special exception relief to nonprofit organizations that were not exclusively IRC 501(c)(3) entities and indeed does not appear to have ever considered this issue of whether IRC classifications are relevant to determining which entities are qualified as "non-profit organizations" under the Zoning Regulations. Therefore the ZA withdraws his prior statement in the ZA email that did not have the benefit of reviewing your client's Articles of Incorporation.

Finally, having considered this particular case further, the ZA believes that it is up to the BZA, not the ZA, to determine if your client qualifies for this particular special exception. Although this application is self-certified, the ZA believes that it is the BZA's role to determine if your client, as the applicant, qualifies for this special exception relief under Section U-203.1(n). The ZA therefore wants to clarify that he will respect the BZA's determination that your client qualifies, or does not qualify, for the special exception relief under Section U-203.1(n).

Best,
Max

Maximilian L.S. Tondro | Assistant General Counsel
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From: Martin Sullivan [<mailto:msullivan@sullivanbarros.com>]
Sent: Tuesday, January 16, 2018 1:43 PM
To: LeGrant, Matt (DCRA); Tondro, Maximilian (DCRA)
Cc: Fothergill, Anne (OP); Alexandra Wilson
Subject: Response to Apparent Determinations on 2118 LeRoy Place NW - BZA # 19659

Hi Matt and Max,

Here is my written response to the issues raised by Anne Fothergill in her voicemail to me last week for BZA #19659, in which she relayed to me that you had found that the FSMB could not qualify for nonprofit office use under U-203.1(n) because (1) the subject building is not currently used for residential, and (2) a 501(c)(6) doesn't qualify.

Quick summary – the Court of Appeals has decided the first issue in our favor, without question. On the second issue, the BZA has decided that one in our favor, on several occasions, and in all other respects this organization clearly meets the definition of a nonprofit organization under the Zoning Regulations.

I am requesting your urgent attention to these two issues, so that Anne can issue her report with the correct information.

Regards,
Marty

Martin P. Sullivan
Sullivan & Barros, LLP
1990 M St, NW #200
Washington, DC 20036
202-503-1704 (D)

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DCRA actively uses feedback to improve our delivery and services. Please take a minute to [share your feedback](#) on how we performed in our last engagement. Also, [subscribe](#) to receive DCRA news and updates.

Exhibit B



November 14, 2017

Meridith H. Moldenhauer

Direct Phone 202-747-0763
Direct Fax 202-683-9394
mmoldenhauer@cozen.com

VIA IZIS

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

**Re: Application No. 19659 (Federation of State Medical Boards) – Party status
Application in Opposition from the Sheridan Kalorama Neighborhood Council**

Chairperson Hill and Honorable Members of the Board:

The Sheridan Kalorama Neighborhood Council (“SKNC”), through its undersigned attorneys, respectfully requests party in opposition status to the above-referenced case, scheduled for hearing on December 20, 2017.

The Applicant seeks variance and special exception relief to allow a non-profit office in the building located at 2118 Leroy Place NW (the “Property”), which is surrounded by single-family residential homes. The Property is located on a narrow, tree-lined, one-way street in the Sheridan-Kalorama residential neighborhood. The Property is zoned R-3, a low-density residential zone and is also located in the Sheridan-Kalorama Historic District.

The SKNC submits its request for advanced party status in opposition, to be considered at a public meeting on either November 15, 2017 or November 29, 2017.

The requesting party is John Sukenik on behalf of SKNC. See Agent Authorization letter at **Exhibit A**. The SKNC, a non-profit organization, has served as the neighborhood association for Sheridan Kalorama for more than 60 years. The SKNC satisfies the requirement for Party in Opposition because:

- a. The core interest of the SKNC is to maintain or preserve the residential quality of the Sheridan Kalorama neighborhood and uphold development standards that are compliant with the Zoning Regulations, and the Application at hand seeks to violate those standards.
- b. The non-profit office use proposed in the BZA Application threatens to disrupt the residential nature of the neighborhood and negatively impact adjacent neighbors.

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Form 140 is enclosed in this filing, and the answers to the questions therein are addressed in turn below:

Party Witness Information

1. *A list of witnesses who will testify on the party's behalf;*

Christopher Chapin, SKNC Executive Committee, and/or other SKNC Members

SKNC reserves the right to add witnesses at the time of the public hearing.

2. *A summary of the testimony of each witness;*

The witness(es) will argue, collectively or individually, that the special exception and variance standards are not met and that the proposed use is out of character with the residential neighborhood and would adversely and unduly affect neighboring properties. The SKNC witnesses could also argue that approval of the requested application could establish a negative precedent for the use of buildings of less than 10,000 sq ft. on low-density residentially-zoned properties in the Sheridan Kalorama neighborhood.

3. *An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts; and*

SKNC reserves the right to supplement the record and provide information pertaining to expert witnesses at a future date before the hearing.

4. *The total amount of time being requested to present your case.*

SKNC anticipates presenting its case in chief in approximately 20 minutes.

Party Status Criteria

1. *How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?*

As will be addressed more fully at the hearing, SKNC is concerned that the Federation of State Medical Boards' ("FSMB") use of the Property will cause undue traffic, parking congestion and noise impacts for neighboring properties. Further, the SKNC witnesses will testify that granting of the requested special exception and variance relief will further unduly affect the Kalorama neighborhood due to an anticipated "domino" effect if other property-owners attempt to use their buildings for office uses in this residential neighborhood.

2. *What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)*

SKNC is a non-profit organization promoting the interests of the Kalorama neighborhood, within which the subject property is located. SKNC has participated in many BZA cases in the past.

3. *What is the distance between the person's property and the property that is the subject of the application before the Commission/Board? (Preferably no farther than 200 ft.)*

N/A – SKNC represents the interests of the entire Sheridan Kalorama community, including neighbors who live within 200 feet of the subject property.

4. *What are the environmental, economic, or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?*

The anticipated impacts of this application are wide-ranging. Environmental impacts could include traffic congestion caused by employees, visitors and guest to the Property. Additionally, noise pollution may be caused by FSMB employees and visitors.

The economic impacts include the possible decline in property value for surrounding residential properties due to quality-of-life impacts brought about by the non-residential use of the subject property. These impacts would be magnified as other similar non-residential uses follow precedent, thereby threatening the residential character of the community.

The social impacts include loss of enjoyment of neighboring properties due to the use of the subject property as a place of business.

5. *Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.*

SKNC reserves the right to supplement the record to include additional evidence on this matter, including methods of demonstrating matter-of-right, residential uses for the subject property.

6. *Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.*

SKNC seeks to participate in BZA cases that threaten to upset the delicate balance of residential uses, foreign chancery uses, and long-standing nonresidential uses in the Sheridan Kalorama neighborhood as is being proposed by the Applicant.

In conclusion, SKNC respectfully requests that the Board grant their request for party status in opposition. Thank you for your attention to this matter, and we look forward to advanced party status discussion to be scheduled in November.

Sincerely,

COZEN O'CONNOR



BY: MERIDITH H. MOLDENHAUER

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2017, I had served a copy of this Party Status request in opposition via e-mail, to the following:

Martin Sullivan
Sullivan & Barros, LLP
1990 M Street
Washington, DC 20036
msullivan@sullivanbarros.com

District of Columbia Office of Planning
c/o Joel Lawson
1100 4th Street, SW, Suite E650
Washington, DC 20024
planning@dc.gov

District Department of Transportation
55 M Street SE, Suite 400
Washington, DC 20003
Anna.Chamberlin@dc.gov

Advisory Neighborhood Commission 2D
c/o David R. Bender, Chairperson
2126 Connecticut Avenue, NW #34
Washington, DC 20008
2D01@anc.dc.gov

Advisory Neighborhood Commission 2D
Ellen L. Goldstein, SMD 2D02
2129 Florida Avenue, NW #501
Washington, DC 20008
2D02@anc.dc.gov



By: Meredith H. Moldenhauer

Exhibit C



January 18, 2018

Samantha L. Mazo
Direct Phone 202-747-0768
Direct Fax 202-683-9390
smazo@cozen.com

VIA IZIS

Frederick L. Hill
Chairperson
Board of Zoning Adjustment
441 4th St. NW, Suite 210 South
Washington, DC 20001

Re: Application No. 19659 (FSMB) – Party Status Opponent SKNC Pre-hearing filing

Dear Chairperson Hill & Members of the Board:

On behalf of the Sheridan-Kalorama Neighborhood Council (“SKNC”), we hereby submit a pre-hearing statement outlining its position and providing information about its presentation to the Board at the public hearing of January 31, 2018, as directed by the Board at the advance party status public meeting on December 6, 2017.

Thank you for your attention to this matter. SKNC will continue to update the record, as necessary, throughout this process.

Sincerely,

By: Samantha L. Mazo

SLM:MHM

LEGAL\34155107\1

Certificate of Service

I certify that on January 18, 2018, a copy of this party status in opposition pre-hearing filing was served, via email, as follows:

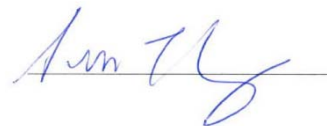
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Advisory Neighborhood Commission 2D
Ellen L. Goldstein, SMD 2D02
2129 Florida Avenue, NW #501
Washington, DC 20008
2D02@anc.dc.gov



Samantha L. Mazo

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

**SHERIDAN-KALORAMA
NEIGHBORHOOD COUNCIL
PARTY STATUS OPPOSITION**

**BZA CASE NO. 19659:
FEDERATION OF STATE
MEDICAL BOARDS**

PARTY STATUS OPPONENT’S PREHEARING STATEMENT

I. INTRODUCTION AND SUMMARY OF SKNC POSITIONS

Party in Opposition, Sheridan Kalorama Neighborhood Council (“SKNC”)¹, hereby submits its statement in opposition to BZA Application No. 19659, filed by Federation of State Medical Boards, Inc. (“FSMB, Inc.” or the “Applicant”) requesting relief from Subtitle U § 203.1(n) to use the vacant Colombian Chancery building at 2118 Leroy Place, NW (the “Chancery Building”) for FSMB, Inc.’s expanded District office and meeting location (FSMB, Inc.’s proposed project will be referenced herein as the “Proposed Office”).²

FSMB, Inc.’s application must be denied because:

- **The Threshold Requirements for Subtitle U § 203.1(n) are not met:**
 - FSMB, Inc. is not a “nonprofit organization” under the Zoning Regulations: Subtitle U § 203.1(n) only permits special exception use for a “nonprofit organization”. That term is specifically defined in the Zoning Regulations and is not satisfied by FSMB, Inc., a 501(c)(6) tax-exempt business league engaged in lobbying efforts.
 - Property is not an “Existing Residential Building”: Subtitle U § 203.1(n) only permits special exception approval for “use of existing residential buildings.” Even assuming

¹ As set forth in the advance party status meeting, SKNC has served the Sheridan-Kalorama neighborhood for more than 50 years, and works to rehabilitate and enhance its residential nature. Its efforts have been successful in preserving residential uses throughout the neighborhood.

² FSMB, Inc. initially requested variance relief from Subtitle U § 203.1(n)(2) under the zoning regulations [the requirement that a building be 10,000 s.f. of gross floor area] because the Chancery Building was 8,121 s.f. in gross floor area. However, without any evidence whatsoever, FSMB, Inc. now asserts that relief is not necessary because unnamed “consultants” have determined that approximately 2,000 s.f. of the below-grade lower level count towards gross floor area. As FSMB, Inc. presents no evidence to support this claim, SKNC rejects this assertion and continues to argue that a variance from Subtitle U § 203.1(n)(2) is required.

arguendo, FSMB, Inc. is a nonprofit organization, which it is not, then Subtitle U § 203.1(n) does not apply because, as the Applicant argues extensively, the Chancery Building has been used non-residentially and is currently vacant.

- The Proposed Office is not in Harmony and will cause adverse effects: The Proposed Office, with 25 staff and meeting space for an entity that is “for profit” under the Zoning Regulations is not in harmony with the general purpose and intent of the Zoning Regulations. Further, the Proposed Office will adversely affect the use of neighboring property through increased bus and vehicular traffic and permanently removing a property from residential use.
- **The Variance is Still Required and the Standards are Not Met.**
 - No evidence that Gross Floor Area requirement is met: FSMB, Inc. retracts its earlier position and provides no evidence that Subtitle U § 203.1(n)’s 10,000 s.f. gross floor area requirement is satisfied. Assuming that a variance is required, FSMB, Inc. does not carry its burden because the Property is not unique, it would not be unnecessarily burdensome to convert the building to residential, and FSMB, Inc.’s use would cause substantial detriment to the Zone Plan and the public good.

II. The Property

A. Approximately 75% of Leroy Place is single-family residential

The Chancery Building is located at 2118 Leroy Place NW (the “Property”). This block of Leroy Place is punctuated by Phelps Place NW to the west and Connecticut Avenue NW to the east and is a narrow, one-way street with on-street parking on both sides. The Property is not the largest lot on Leroy Place.

The Property is zoned R-3, a single-family residential zone, and is within the boundaries of the Sheridan Kalorama Neighborhood (the “Neighborhood”) and the Sheridan Kalorama Historic District (the “Historic District”). The Neighborhood and Historic District are residential in nature, and the Historic Preservation Office’s brochure on the Historic District highlights that “Sheridan-Kalorama has a distinctly residential ambiance.”

FSMB, Inc.'s characterization of the surrounding uses on Leroy Place, especially in the image attached as Exhibit 103B in the public record, is, at best, misleading. Therefore, instead of being an overly "institutional" setting, approximately 75% of the buildings on the block are now single-family residential homes. A diagram showing the overwhelmingly-residential nature of Leroy Place is attached at Tab A. Further, throughout the Neighborhood, many properties have been reverted back to residential use from a prior non-residential use as identified in Tab B. Undoubtedly, the trend in the Neighborhood is to return properties back to residential uses when grandfathered Institutional/Chancery uses are sold.

B. The Chancery Building: Substantial Use of the Building Ended in 2007³

As acknowledged by the Applicant, the Chancery Building is now "vacant" and "has been used for non-residential, office purposes by the Republic of Colombia" for many decades. (Applicant's Pre-Hearing Statement at pgs. 1, 3). However, evidence that will be presented by SKNC members and other neighbors will contradict FSMB, Inc.'s assertion that there was "moderate to heavy use" of the Chancery building "until 2017" (Applicant's Pre-hearing Statement at pgs. 9, 3). As will be testified to at the hearing, activity at the Colombian Embassy decreased steadily by 2007, and by 2012, very few visitors entered or exited the building. Official business was instead conducted at other Colombian government buildings, and the Republic of Colombia purchased their present location at 1724 Massachusetts Ave. in 2007 ("1724 Massachusetts Avenue"). Necessary building permits for repairs and updates for 1724 Massachusetts Avenue were issued in 2007 as reflected in the Office of Tax and Revenue report and PIVS at Tab C. Accordingly, despite FSMB, Inc.'s assertions to the contrary, activity at the

³ As an initial matter, the Applicant has not provided any elevations or geo-tech studies showing the Property and/or any topographic changes that may be on it. Accordingly, the only evidence before the Board are the Google map images presented by FSMB, Inc. and additional photos that show the Chancery Building to be a three-story structure that is accessed via a 15-foot wide alley to the rear.

Chancery Building substantially tapered off after 2007, and, as even the Applicant acknowledged, the Property is now vacant.

C. 2017 Sale of the Property – There was a bidding war and FSMB, Inc. paid \$650,000 more than the asking price.

On page 3 of its brief, FSMB, Inc. asserts “the Property was offered to the public, but found no residential-dwelling takers.” This misconstrues the facts as described in the affidavit of John Sukenik attached here at Tab D (the “Sukenik Affidavit”) showing that indeed, there was a residential buyer – potentially two – and the only reason there were “no residential-dwelling takers” is because FSMB, Inc. bid up the Property’s price by \$650,000 more than the asking price.

As detailed in the Sukenik Affidavit, which has based on John Sukenik’s discussion with the Property’s listing agent, the Colombian government put the Property up for sale in July 2017 for \$3.5 million. That amount was consistent with the District’s most recent appraisal identified by the District’s Office of Tax and Revenue attached to the Sukenik Affidavit. This Property’s listing information stated that the Property “could be a spectacular residence.” *See* Sukenik Affidavit, Tab D.

There were three bidders on the Property, a local couple, a California individual, and FSMB, Inc., and the local couple stated that their interest was to use the Property for a single-family residential use. With three active buyers interested in the Property, the Sukenik Affidavit explains that there was a “bidding war” in which the ultimate sales price of the Property was escalated far beyond the original \$3.5 million listing price by FSMB, Inc. which ultimately paid a total of \$4.15 million.

Accordingly, but for the actions of FSMB, Inc., the Property may likely have been sold to an individual – either the local couple or the California individual, and the Property then could have been used as a single-family home.

Finally, FSMB, Inc.’s reference to the sales background of a property at 2241 Bancroft Place, NW is irrelevant. That structure, at 8,212 s.f., was offered for \$6.2 million, or almost twice the Property’s original asking price. Indeed, properties in this price range in the Neighborhood normally take months to sell, given the relatively narrow market for such homes. Further, 2241 Bancroft is neither vacant, nor is it an Institutional use and/or Chancery building.

III. FSMB, INC.’s USE

A. FSMB, Inc. is a 501(c)(6) Business League

It is undisputed that FSMB, Inc. is a 501(c)(6) business league, as indicated on their 990 filing with the IRS. *See Tab E.* That filing states FSMB, Inc. has 215 employees and net assets of \$23,927,732 and is a “leader in medical regulation, serving as an innovate catalyst for effective policy and standards.” *See* FSMB, Inc. IRS 990 at Tab E.

At pages 5-6 of its pre-hearing statement, FSMB, Inc. explains that it is a business league and that it:

“serves as a convening forum for the state medical boards... [and its] initiatives have shaped policy, facilitated the sharing of information between governmental entities... In addition to the development of model practices and best practices for state medical boards, the FSMB provides programming assistance to a variety of federal agencies, such as the Department of Health and Human Services, the Department of Defense, Department of Veterans’ Affairs, the Drug Enforcement Administration and the Food and Drug Administration.”

FSMB Inc.’s website discusses the organization’s lobbying and policy activities, which include “FSMB Policies”; “Legislation Tracking” and “Government Affairs”, and describes the organization as:

“a national nonprofit representing the 70 medical and osteopathic boards of the United States and its territories. Since its founding, the FSMB has grown in the range of services it provides – from assessment tools to policy documents, from credentialing to disciplinary alert services – while continuing to serve the interests of its member boards. The ultimate objective is to promote excellence in medical practice, licensure, and regulation as the national resource and voice on behalf of state medical boards in their protection of the public.”

See Tab F.

In discussing the lobbying efforts, FSMB Inc.’s website identifies that the organization has an “Advocacy Network” for its members, and the website page on the “Roles and Responsibilities” includes the following language,

Should you then be interested in scheduling a meeting with one or more of your Members either in D.C. or in your home state, please contact Jonathan Jagoda at jjagoda@fsmb.org. Our staff will then contact the Member's scheduler and coordinate a time for you to meet with the congressional office. Most meetings are held at the staff level, but Members often attend the meeting for a few minutes depending on their schedule and availability.

See Tab F.

B. The FSMB Research and Education Fund is Not the Applicant Before the Board

While FSMB, Inc. may have a separate 501(c)(3) “Research and Education Fund” (the “Fund”), the Fund is not the owner of the Property or the applicant before the Board. As stated on the Fund’s 990 filing, the Fund’s mission is “To promote research and education to improve the quality of health care through effective Physician Licensure and Regulation.” A copy of the Fund’s Internal Revenue Service (“IRS”) 990 filing is attached here at Tab G.

The Fund’s 2015 990 filing with the IRS states that it had 0 (zero) employees and less than \$2,706,572, but its reported revenue fell to a mere \$13,900 in the same year. Meanwhile, FSMB Inc.’s 2015 revenue exceeded \$40 million. Clearly, with zero employees, it would be impossible for the Fund to “use” the Property.

IV. THE PROPOSED OFFICE DOES NOT SATISFY THE THRESHOLD REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF

The Property is zoned R-3, which is intended to permit attached rowhouses on small lots. The purpose of the zone is to “allow for row dwellings, while including areas within which row dwellings are mingled with detached dwellings, semi-detached dwellings, and groups of three (3) or more row dwellings.” Subtitle D § 300.6.

This zone limits the matter of right uses to single family homes, religious institutions, community centers, daytime care uses, and public schools, among others. Chanceries existing as of 1978 can continue as a matter of right but cannot be expanded, and use of a chancery by a new government would require special exception approval.

General offices are not permitted as a matter of right or by special exception, in furtherance of the R-3 zone’s residential purpose. A small handful of non-residential uses are permitted as a special exception, including “nonprofit organization” pursuant to Subtitle U § 203.1(n), which states:

Use of existing residential buildings and the land on which they are located by a **nonprofit organization** for the purposes of the **nonprofit organization**: (1) If the building is listed in the District of Columbia's Inventory of Historic Sites or, if the building is located within a district, site, area, or place listed on the District of Columbia's Inventory of Historic Sites; (2) If the gross floor area of the building in question, not including other buildings on the lot, is ten thousand square feet (10,000 sq. ft.) or greater; (3) **The use of existing residential buildings and land by a nonprofit organization** shall not adversely affect the use of the neighboring properties; (4) The amount and arrangement of parking spaces shall be adequate and located to minimize traffic impact on the adjacent neighborhood; (5) No goods, chattel, wares, or merchandise shall be commercially created, exchanged, or sold in the residential buildings or on the land by a nonprofit organization, except for the sale of publications, materials, or other items related to the purposes of the nonprofit organization; and (6) Any additions to the building or any major modifications to the exterior of the building or to the site shall require approval of the Board of Zoning Adjustment after review and recommendation by the Historic Preservation Review Board with comments about any possible detrimental consequences that the proposed addition or modification may have on the architectural or historical significance of the building or site or district in which the building is located; [emphasis added]

As discussed below, the Proposed Office does not satisfy the threshold requirements for this special exception because it is not a “nonprofit organization” as that term is defined in the Zoning Regulations, and the Property is not an “existing residential building”.

A. FSMB Is a 501(c)(6) Business League; Not a “Nonprofit Organization” Under the Zoning Regulations

The DC Zoning Regulations define “Organization, Non-Profit” as:

Organization, Non-Profit: an organization organized, registered with the appropriate authority of government, and operated **exclusively** for religious, charitable, literary, scientific, community, or educational purposes, or for the prevention of cruelty to children or animals, provided no part of its net income inures to the benefit of any private shareholder or individual. [emphasis added]

(Subtitle B § 100.2)

FSMB, Inc.’s operations do not satisfy the definition above, and so should not be regarded as a nonprofit organization under the Zoning Regulations entitled to special exception

approval in Subtitle U § 203.1(n). Due to FSMB, Inc.'s lobbying and other business-related efforts, its activities are certainly not “exclusively” for “religious, charitable, literary, scientific, community, or educational purposes, or for the prevention of cruelty to children or animals”, as expressly stipulated in the definition.

Further, it's important to recognize that the IRS distinguishes between more than 20 different kinds of non-profit organizations. A summary review of the IRS's terminology makes it clear that the Zoning Regulations define “nonprofit organization” in such a way as to apply only to 501(c)(3) charities. As shown in the chart on page 67 of IRS Publication 557, attached at Tab H, while 501(c)(3) charities are organized and operated “primarily for religious, charitable, scientific, educational, and certain other purposes”, 501(c)(6) business organizations are typically business leagues or associations that are organized and operated primarily to promote and lobby for the **common business interests** of its members. [emphasis added] Further, the IRS publication states that “An organization that is exempt under section 501(c)(6) can work for the enactment of laws to advance the common business interests of the organization's members.” Other examples of 501(c)(6) organizations include the U.S. Chamber of Commerce and the National Football League. *See* Tab H.

The definition of “nonprofit organization” in the Zoning Regulations and description of 501(c)(3) charities by the IRS are nearly identical, as to distinguish it from the numerous other types of non-profit organizations under IRS rules. To illustrate this point, below is a chart that compares the Zoning Regulations' definitions of “nonprofit organization” with the IRS' definition of 501(c)(3) charities and 501(c)(6) organizations. The language that is similar highlighted in yellow. Importantly, the classification language for a 501(c)(6) organization,

which is shown in red, is not similar to the Zoning Regulations definition of “nonprofit organization”.

ZR58 Definition of “nonprofit organization”	Zoning Regulation Definition of “nonprofit organization”	IRS – Classification of 501(c)(3) charity	IRS – Classification of 501(c)(6) organization
An organization organized and operated exclusively for religious, charitable, literary, scientific, community, or educational purposes, or for the prevention of cruelty to children or animals; provided, that no part of its net income inures to the benefit of any private shareholder or individual.	An organization organized, registered with the appropriate authority of government, and operated exclusively for religious, charitable, literary, scientific, community, or educational purposes, or for the prevention of cruelty to children or animals; provided that no part of its net income inures to the benefit of any private shareholder or individual.	Religious, Educational, Charitable, Scientific, Literary, Testing for Public Safety, to Foster National of International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organizations	“Improvement of business conditions of one or more lines of business” Business Leagues, Chambers of Commerce, Real Estate Boards, etc.

There are other important differences between 501(c)(6) organizations and 501(c)(3) charities. To that end, 501(c)(6) organizations are entitled to separate regulation and exemptions from a 501(c)(3) charity. For example, a 501(c)(6) organization is required to pay property taxes, while a 501(c)(3) charity is not. Moreover, membership dues and other payments to a 501(c)(6) charity are tax-deductible only if they are “qualified business expenses.” Further, as a 501(c)(6) organization, FSMB Inc. has greater latitude with regard to its private inurement practices, which allow persons with influence inside the organization to compensate their leadership much like what would occur in the for-profit industry. This suggests that part of FSMB Inc.’s net income may inure to the benefit of a private shareholder or individual, in direct contradiction to the latter portion of the definition of “nonprofit organization” in the Zoning

Regulations cited above. Also, the fact that FSMB, Inc. has created a separate 501(c)(3) Fund is dispositive that indeed FSMB, Inc. is not a charity and should not be considered a “nonprofit organization” under the Zoning Regulations.

Limiting the interpretation of the Zoning Regulations’ definition of “nonprofit organization” to 501(c)(3) charities is consistent with other DC Code sections. For example, D.C. 29-401.02(3)-(4) states in relevant part, “Charitable corporation” means a domestic nonprofit corporation that is operated primarily or exclusively for one or more charitable purposes” and “Charitable purposes means a purpose that: Would make a corporation operated exclusively for that purpose eligible to be exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986”. *See* DC Code section, Tab I.

In short, several criteria disqualify FSMB, Inc. from consideration as an “nonprofit organization” as defined in the Zoning Regulations. If the use is not deemed to be an eligible nonprofit organization, it would not be eligible for any office use on the property without a use variance.⁴ Notably, this conclusion is consistent with the BZA’s prior holdings as the cases FSMB, Inc. cites all approved uses by 501(c)(3) charities.⁵ Indeed, in BZA Case No. 18604 (the Halcyon House), the Board’s second condition of approval reads “[that] Property shall be used only for a 501(c)(3) nonprofit organization.”

B. The Chancery Building is Vacant and Non-residential

⁴ Importantly, in BZA case 17050, which was withdrawn, OP recommended denial of a use variance for an office use at 2209 Massachusetts Ave. an R-3-zoned chancery. A copy of the OP report is at Tab I. In recommending a denial, OP stated:

- “The precedent to allow conversion of a chancery to an office use would have a detrimental effect on the existing residential character of the neighborhood.”
- “Although applicant’s architect estimates it would cost approximately \$2,000,000 to convert back to a residential use, the applicant’s arguments that this structure would not be easily converted to residential use falls short when it was built and used as a residential structure for most of its existence”
- “The presence of so many foreign missions already heavily impacts the area. The conversion of chanceries to office uses would further alter the residential nature of the neighborhood.”

⁵ One of the applicants in a case referenced by FSMB Inc. no longer exists, but that applicant’s parent organization is a 501(c)(3).

The Special Exception permitted in Subtitle U § 203.1(n), is limited only to the “Use of existing residential buildings.” As stated at least six times in FSMB, Inc.’s filing, the Chancery Building is a vacant, non-residential building *See* FSMB Inc.’s Prehearing statement at pgs. 1-3, 8-11, and 14.

Further, the Zoning Regulations expressly determine that a chancery use, such as the subject Chancery Building, is *not* residential in nature. Specifically, Subtitle B § 200.2(g), the “use category” definition of “chancery” states (emphasis added):

(1) Chancery:

- (a) The principal offices of a foreign mission used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), including the site and any building on such site that is used for such purposes; and
- (b) Exceptions: This use category **does not** include uses **which would typically fall within the office or residential use** categories, such as an ambassador’s residence or embassy staff residence building.

Because the Chancery Building is clearly and indisputably *not* an “existing residential building”, then Subtitle U § 203.1(n) does not apply. Based on many well-accepted doctrines of regulatory interpretation, including “the Whole Act Rule”, the Board is simply not permitted to ignore or “write out” the requirement that eligibility for Subtitle U § 203.1(n) is premised on the subject building being an “existing residential building”. *See United States v. Fisher*, 6 U.S. (2 Cranch) 358 (1805)(applying the “whole act rule”, which has evolved to holdings that find “any attempt to segregate any portion or exclude any other portions from consideration is almost certain to distort the [regulatory] intent”, 2A Southerland § 47.02) .

Accordingly, because the Chancery Building is not an “existing residential building”, then special exception is not permissible under Subtitle U § 203.1(n), even assuming *arguendo*

that FSMB, Inc.’s use is an “organization, nonprofit” as defined by the Zoning Regulations – which it is not.⁶

C. Project Not in Harmony with Purpose and Intent of the Zoning Regulations

Even if the threshold requirements of Subtitle U § 203.1(n) are met (which they are not), the Proposed Office use is not permissible as a special exception because it will not be in harmony with the general purpose and intent of the Zoning Regulations and Maps, and will tend to adversely affect the use of neighboring property.

Under Subtitle X § 901.2, the Board is authorized to grant a special exception where it finds the relief granted is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided that all of the specific requirements for the relief are met:

- (1) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (2) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (3) Subject in specific cases to special conditions specified in the Zoning Regulations. 11 DCMR Subtitle X § 901.2.

The application is not in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The DC Zoning Regulations specifically state that the Residential House (R) zones are “residential zones, designed to provide for stable, low- to moderate- density **residential areas suitable for family life and supporting uses.**” Subtitle D § 100.1. [emphasis added] They also state the purpose of R zones is to recognize and reinforce “the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place,

⁶ Aside from seeking a use variance (which should be required here), FSMB Inc.’s only option would be to seek a variance for relief from the “use of existing residential building” limitation in the Subtitle U § 203.1(n). Such request has not been made and would likely be denied for the reasons set out in 17050.

preservation of housing stock, improvements to the overall environment, and **low and moderate-density housing** to the overall housing mix and health of the city.” Subtitle D § 100.2(b) [emphasis added].

As discussed above, an office use is not permitted, except as part of a nonprofit organization pursuant to Subtitle U § 203.1(n). As stated above, the Proposed Office use does not satisfy the threshold requirements of that regulation because it does not satisfy the Zoning Regulation’s definition of “nonprofit organization”, and the Chancery Building is not an “existing residential building” that is even eligible for the special exception use. Accordingly, expanding the application of Subtitle U § 203.1(n) to include a use that is *not* a nonprofit organization in a structure that is *not* an existing residential building is *not* in harmony with the general purpose and intent of the Zoning Regulations.

Further, the predecessor to Subtitle U § 203.1(n) was adopted for the purpose of ensuring that “large residential buildings” do not become “dilapidated” and vacant. That is not the case here when the evidence states that a potential residential purchaser was out-bid by the FSMB, Inc. in a possible “bidding war.” The Property was not going to be dilapidated.

Accordingly, FSMB Inc.’s proposed office use is not in harmony with the general purpose and intent of the Zoning Regulations, which is to encourage residential use of R-3 zoned properties and to only permit non-residential uses under circumstances that do not exist here.

D. Project Will Tend to Adversely Affect Use of Neighboring Property

As stated earlier, 75% of the properties on Leroy Place are residential in use, including the two homes directly adjacent to the Chancery Building, those across the street, and those behind the alley to the rear of the Property.

In light of the surrounding residential uses, the Proposed Office will adversely affect the neighbors especially because FSMB, Inc.’s website invites all of FSMB Inc.’s 700+ members to its office, stating, “FSMB members are encouraged to visit the new offices whenever they are in Washington.” *See Tab K.* The proposed Office use, including the myriad of “invited” guests will adversely affect the neighboring residential properties due to the numerous visitor vehicular trips the use will generate (likely most in taxi or uber), in addition to the support services that will be required, including, but not limited to: cleaning crews, trash pick-up, landscapers, event arrivals and departures, and deliveries – on a block with a narrow right-of-way with multiple curb cuts and parking on both sides of the street.⁷ Indeed, Leroy Place prohibits buses due to the narrow street width.



The Proposed Office use is also likely to cause noise, pollution, and light impacts due to the frequent cars idling on the street waiting for passengers, which will directly cause back-ups along the one-way, narrow street.

⁷ More information on the size and scale of FSMB, Inc.’s operations is evident in the annual filing, available at: https://www.fsmb.org/Media/Default/PDF/Publications/FSMB_2015_Annual_Report.pdf

Further and importantly, the neighborhood will be affected adversely by permanently removing residential uses and creating a likely domino effect of other 501(c)(6) associations claiming qualified non-profit organization status to locate their offices in R-3 zoned neighborhoods. Further, adding the Proposed Office use on the Property will create an adverse effect to neighboring properties by creating dark properties on nights and weekends.

Finally, the intensity of FSMB Inc.'s use is a substantial change for the Property and the neighborhood because substantial use of the Chancery Building ended in approximately 2007. Therefore, the addition of FSMB, Inc.'s office use for 25 employees and guests will cause a significant and adverse effect on the Neighborhood. We direct the Board to BZA Case No. 13787 where it denied a request for special exception approval for a nonprofit organization, finding that use would create adverse effects because the space it was moving into was vacant and accordingly the Board found that "the proposed use is a more-intense use of the premises than had existed on the site in the last three years." That is certainly the case here, where the Colombian's use reduced significantly beginning in 2007. Further, the fact that FSMB Inc.'s use will be significantly more intense than the Colombian's recent use of the Chancery Building is markedly different from the factual situation presented in BZA Case No. 15555, where the Board noted that applicant, a 501(c)(3) nonprofit charity, would have a less intense use of that subject building.

E. Project Does Not Satisfy Special Exception Conditions For Non-Profit Organization

Use of existing residential buildings and the land on which they are located by a non-profit organization for the purposes of the non-profit organization is also specifically

regulated by the conditions contained in Subtitle U § 203.1(n), many of which the Applicant does not satisfy, even if it was a qualified non-profit organization, which it is not:

- (1) *If the building is listed in the District of Columbia's Inventory of Historic Sites or, if the building is located within a district, site, area, or place listed on the District of Columbia's Inventory of Historic Sites;*

The Building is located within the Sheridan Kalorama Historic District.

- (2) *If the gross floor area of the building in question, not including other buildings on the lot, is ten thousand s.f. (10,000 sq. ft.) or greater;*

FSMB Inc. initially stated that gross floor area of the building in question, not including other buildings on the lot, was 8,121.13 s.f., and appropriately requested an area variance from this provision for which the support is lacking, as will be discussed below. Now without any evidence, FSMB, Inc. has merely asserted that it “found” enough square footage in the lower level to bring it over the 10,000 s.f. mark. This cannot be believed without evidence to document it. That has not been produced, and a variance should continue to be required.

- (3) *The use of existing residential buildings and land by a non-profit organization shall not adversely affect the use of the neighboring properties;*

As outlined above, the Chancery Building is not an “existing residential building”. However, even if it was, FSMB Inc. fails to demonstrate how it will not adversely affect the neighboring properties. The Applicant claims that the proposed office use will not inflict greater impacts than the previous chancery use. However, in order to make this determination, facts relating to the former chancery use must be presented so that a fair comparison can be made. These facts are not included in the Applicant’s materials. Rather, the only proffered evidence is that the Chancery Building use became very limited after 2007, and that it is vacant now.

Following pressure from the ANC, FSMB Inc. now admits that the Proposed Office will have 25 full time employees (“FTE”), which really says that only 25 employees will be in the Proposed Office at any one time. It does not address the issue of when one employee comes in the morning and then leaves for the day only to be replaced by another “FTE”, or another. This could potentially create not one vehicular drop off per day per employee, but potentially multiple ones, as some employees come and go. This issue has not been explained or documented.

Further, the nature of the Proposed Office will not contribute to or interact with neighboring properties in a manner that is consistent with a residential neighborhood. This constitutes an adverse impact because it erodes the features inherent to residential uses. These adverse impacts could include:

- Preventing the gain of residents as neighbors, involved in neighborly activities including supporting residents in tasks such as shoveling snow, pet-sitting, baby-sitting and minding older children, and reporting suspicious activities.
- Obliging neighbors to monitor the activities of an effectively vacant property during the weekends.

Finally, granting permission for this use will materially weaken the primarily-residential nature of the block. Continued, broad-based, nonresidential use would adversely affect the holistic residential nature of this block. It would be by far the largest non-residential use in terms of its occupants. In addition, non-residential users could artificially drive up property values because families would effectively be competing with the commercial market buyers, as occurred here.

- (4) *The amount and arrangement of parking spaces shall be adequate and located to minimize traffic impact on the adjacent neighborhood;*

FSMB, Inc. notes that there are currently two full-sized parking spaces on the Property and that their number and arrangement will be adequate to minimize traffic and parking impacts on the adjacent neighborhood. However, the traffic and parking demands of the Property could far exceed its parking supply when it is used for meetings. A much greater degree of pedestrian and motor traffic including, but not limited to, possibly extended periods of dangerous double parking in flagrant violation of clearly posted signage, blocking fire hydrants, impeding bicycle traffic, illegal parking, and limiting parking for neighbors on the block would be extremely disruptive to this residential street, especially due to its narrowness. Surrounding blocks would also be adversely affected.

In short, there is no possibility of creating dedicated parking to accommodate such levels of activity, nor has FSMB, Inc. documented that there is an adequate amount of public parking available in close proximity for guests and workers to use.

- (5) *No goods, chattel, wares, or merchandise shall be commercially created, exchanged, or sold in the residential buildings or on the land by a non-profit organization, except for the sale of publications, materials, or other items related to the purposes of the non-profit organization; and*

The Applicant represents that no goods, chattel, wares, or merchandise shall be commercially created, exchanged or sold in the residential buildings or on the land by a non-profit organization, except for the sale of publications, materials, or other items related to the purposes of the non-profit organization.

- (6) *Any additions to the building or any major modifications to the exterior of the building or to the site shall require approval of the Board of Zoning Adjustment after review and recommendation by the Historic Preservation Review Board with*

comments about any possible detrimental consequences that the proposed addition or modification may have on the architectural or historical significance of the building or site or district in which the building is located;

The Applicant is not planning to modify the exterior of the Building or the site; however, modifications to the interior of the building may occur. The plans provided do not contain sufficient information on this point. If substantial, interior changes could trigger the need for additional review, particularly by the Historic Preservation Office.

F. The Cases Relied Upon by FSMB, Inc. Do Not Require the Board to Approve the Subject Application

FSMB, Inc. devotes almost two, single-spaced pages referencing “Case Law”, in an effort to convince the Board that since special exceptions have been granted in the past, it should do so again here. These efforts are not persuasive. Indeed, at most, those cases document that the BZA has, in the past, approved nonprofit uses as special exceptions where the standards were met. That is not the case here.

First, the nonprofit organizations seeking special exception relief in the cases FSMB, Inc. relies on are 501(c)(3) charities. Copies of the 990 Filings for those charities are attached at Tab L. As documented extensively, FSMB Inc. is a 501(c)(6) business organization. Accordingly, while the other charities could have satisfied the Zoning Regulations’ definition of “nonprofit organization”, FSMB Inc. cannot.

Second, in all but one case, those subject properties had been “existing residential uses”. Indeed, in BZA Case No. 18604, the Halcyon House had been used residentially as a dorm by Georgetown University since the 1960s, and FSMB Inc.’s statement that it “had not been used for residential purposes” was incorrect. Further, the Tudor House and the Dower House, which were part of the Tudor Place Foundation cases (BZA Case No. 14729, 16477, 17984) had been residentially used prior to nonprofit special exception approval. Also, the Cady Lee Mansion, the subject of BZA Case No. 16878, had been residentially used up until shortly before the

special exception approval was granted. Finally, FMSB, Inc.'s reliance on BZA Case No. 15555 is misguided. That case was approved in 1991, and as is bounded by a nine-story hotel to the north, and other RA-4 zoned properties along Connecticut Avenue. The higher density nature of the surrounding uses factored into that applicant's argument that the property was "not appropriate" for residential uses. Also, it appears that very different evidence was presented in Case No. 15555. To that end, the Board relied on evidence demonstrating that the non-profit organization's use would be less intense than the former use and on evidence presented expert witness testimonies from traffic and architecture experts. No similar evidence has been presented here. FSMB, Inc. has presented nothing but innuendo to support its claims regarding the "intensity" of the former Consulate Building use. Rather, the only evidence in the record on this issue is from the neighbors who have (and will) document that the Colombian use of the Consulate Building has been negligible for almost a decade. Also, FSMB, Inc. has proposed no expert witnesses, and, instead, stakes its claims on unnamed consultants.

For these reasons, the cases cited to by FSMB, Inc. should not be relied upon by the Board in its evaluation of the subject case.

V. THE APPLICANT FAILS TO MEET THE BURDEN OF PROOF FOR VARIANCE RELIEF

FSMB Inc. has not provided any evidence that it satisfies the 10,000 s.f. gross floor area requirement of Subtitle U § 203.1(n)(2), and it has the express burden of proof to do so pursuant to Subtitle X § 1002.1. Accordingly, the Application requires a variance from this provision. By their nature, variances are the most difficult types of relief to obtain, and are granted sparingly, if at all.⁸ The standards for granting a variance are a well-accepted three-part test adopted into the Zoning Regulations, as follows:

⁸ Importantly, OP recently recommended denial of similar, variance relief for a proposed non-profit structure.

- Property must be unique: “[w]here, by reason of **exceptional narrowness, shallowness, or shape of a specific piece** of property at the time of the original adoption of the regulations, or **by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition** of a specific piece of property” AND
- Uniqueness must cause practical difficulty in providing a residential use: “the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in **peculiar and exceptional practical difficulties** to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship” AND
- No substantial Detriment: “provided, that the relief can be granted **without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan** as embodied in the Zoning Regulations and Map.”

Subtitle X § 1000.1 [emphasis added].

A. The Property Is Not Affected by an Exceptional Situation or Condition

As a general matter, the Property is not unique. Clearly, it is neither exceptionally narrow nor shallow. Further, it is not configured in a unique shape, and it does not experience exceptional topographic changes different from other properties along Leroy Street.

Therefore, the Property does not specifically fall under the Zoning Regulation’s definition of unique. Even accepting *arguendo* that the D.C. Court of Appeals has found that “uniqueness” “may arise from a confluence of factors which affect a single property” *See Gilmartin*, 579 A.2d at 1168, the Property would not be unique.

FSMB Inc.’s prior argument for “uniqueness” is that the building is “large”, and apparently didn’t satisfy the 10,000 s.f. gross floor area requirements due to something the Applicant would like to characterize as a “technicality.” Unfortunately for the Applicant, it is well accepted that failure to satisfy a zoning requirement cannot be the basis for a claim of

uniqueness. Indeed, finding so would effectively gut the “uniqueness” prong all-together because anyone could claim their property is “unique” simply because it does not satisfy the Zoning Regulations. Such an argument is circular and should be rejected here.

Rather, there is nothing unique about this Property. Indeed, at 5,124 s.f. it is not the largest lot on this block of Leroy Place, and at 8,121 s.f. it is not the largest structure in the neighborhood. As such, FSMB, Inc. has failed to carry its burden of proof on the first prong (Uniqueness), and the variance relief should not be granted.

B. Strict Application of Zoning Regulations Would Not Result in Practical Difficulty

1. Property Could Have Been Sold as a Residence

The Sukenik Affidavit explains that there was a bidding war that included a couple that wanted to use the property as a residential home. That couple was out-priced through a bidding war, lead by FSMB, Inc. But for FSMB, Inc.’s offer of \$650,000 over the asking price, the Property could have been used as a single-family home. *See* the John Sukenik Affidavit, Tab C.

This would suggest that multiple offers to purchase the property, including expressly one – and possibly two – for residential use directly refutes FSMB Inc.’s stated claim that the prior office configuration for the Colombian Embassy “renders the property less than ideal and makes it unlikely that the Property would be used as a single family residence.” *See* Applicant’s Statement, pg. 6.

2. Property Could Be Renovated to Become a Single-Family Home

FSMB Inc. has not presented any evidence whatsoever that the Chancery Building could not be renovated to become a private residence in accordance with the R-3 zone requirements. Rather, the opposite is true. SKNC will present evidence from neighbors that the Chancery

Building could be renovated to be returned to a single-family home. In addition, according to Guillermo Rueda, a licensed architect in the District, it would not be practically difficult to restore the building back into a residence because of the Property's size, wall locations, and other facts. Mr. Rueda's also found that the residential restoration costs in-line with the refurbishing budget proposed by the Applicant at the November 20, 2017 ANC meeting. His letter and resume are located in Tab M.

C. There will be Substantial Detriment to the Public Good

For these reasons, OP has found as much in another case, concluding:

“A variance from the 10,000 square foot building requirement would cause substantial harm to the zoning regulations, as it would be directly contrary to the intent of the provision. The building size requirement is the linchpin of the special exception clause.”⁹

Next, despite the Applicant's summary conclusive statements to the contrary, it is clear that granting this variance relief will cause substantial impairment of the intent, purpose, and integrity of the zone plan by approving the requested relief. As noted, the R-3 zone is intended for residential use.

SKNC defers to the wisdom of the District's technical planners and is also of the opinion that the requested relief, if granted, would substantially harm the Zoning Regulations.

VI. SUBSTANTIAL COMMUNITY OPPOSITION

- FSMB Inc. has done next to no community outreach. Indeed, the first time SKNC or others had seen FSMB Inc.'s proposed conditions was its Pre-hearing statement. Regardless, the proffered conditions do not diminish the damage to the residential nature of the Neighborhood.
- The Proposed Office is unanimously opposed in the neighborhood.

⁹ See OP report for BZA case #19504, pg. 3-4.

- ANC 2D voted to oppose the Application.
- There are more than 70 letters in opposition, many of which from neighbors within 200 feet of the Property.
- SKNC along with the Sheridan Kalorama Historical Association have been granted party status in opposition. A third request for party status in opposition was filed on January 15, 2018 by the owner of the property directly across the street on Leroy Place.

VII. SKNC PRESENTATION AT THE JANUARY 31, 2018 BZA HEARING

SKNC requests 25 minutes and anticipates presenting the following at the BZA hearing:

1. Christopher Chapin – President of SNKC
2. John Sukenik – Member of SKNC Executive Committee
3. Expert Testimony by Ellen McCarthy (expert in land use). See resume in Tab N.

VIII. CONCLUSION

For the reasons stated above, the requested relief fails to meet the applicable standards for zoning relief under the Zoning Regulations. Accordingly, SKNC respectfully requests that the Application be denied.

Respectfully submitted,
COZEN O'CONNOR



Samantha L. Mazo

Exhibit D

DeBear, Eric J.

From: LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>
Sent: Friday, January 12, 2018 3:16 PM
To: Fothergill, Anne (OP)
Cc: Tondro, Maximilian (DCRA)
Subject: RE: BZA Case 19659

Anne-

My *responses* to your **questions** are:

1. Subtitle U Section 203.1 (n) states: *“Use of existing residential buildings and the land on which they are located by a nonprofit organization for the purposes of the nonprofit organization”*

This property’s most recent use was a chancery (and it is currently vacant) – would that be considered an existing residential building? *No; a chancery is not considered a residential use so the proposed use would not qualify under Subtitle U Section 203.1 (n).*

2. The organization that has applied for relief to locate their DC office in this building is a “chartered as a 501(c) (6) non-profit organization and has an affiliated 501(c) (3) foundation, the FSMB Foundation” according to the applicant’s prehearing statement. Would this qualify as a nonprofit organization for U 203.1(n)? *No; After reviewing this matter with my counsel I have determined that an organization chartered as a 501(c) (6) non-profit organization does not qualify as a nonprofit organization for U 203.1(n) purposes.*

I hope this information is helpful and do let me know if you have any further questions.

Matthew Le Grant
Zoning Administrator- DCRA
1100 4th ST SW, Washington DC
202 442-4652
Matthew.legrant@dc.gov

From: Fothergill, Anne (OP)
Sent: Friday, January 12, 2018 2:59 PM
To: LeGrant, Matt (DCRA)
Cc: Tondro, Maximilian (DCRA)
Subject: BZA Case 19659

Good afternoon Matt,

Two questions have been raised by the Attorney for a Party in opposition to this case that I am hoping you can address.

1. Subtitle U Section 203.1 (n) states: *“Use of existing residential buildings and the land on which they are located by a nonprofit organization for the purposes of the nonprofit organization”*

This property’s most recent use was a chancery (and it is currently vacant) – would that be considered an existing residential building?

2. The organization that has applied for relief to locate their DC office in this building is a “chartered as a 501(c) (6) non-profit organization and has an affiliated 501(c) (3) foundation, the FSMB Foundation” according to the applicant’s prehearing statement. Would this qualify as a nonprofit organization for U 203.1(n)?

Thanks for your attention to these questions.

Anne



Anne Fothergill • Development Review Specialist
DC Office of Planning
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202.442.8843
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Exhibit E

January 16, 2018

Matthew Le Grant
Zoning Administrator
DCRA
Matthew.legrant@dc.gov

Re: 2118 LeRoy Place, NW; BZA Application No. 19659

Dear Mr. LeGrant:

On Friday, January 12, 2018, I received a voicemail from Anne Fothergill from the Office of Planning regarding BZA Application No. 19659 for 2118 LeRoy Place, NW, located in the R-3 zone district. That Application is for special exception approval pursuant to Subtitle U, Section 203.1(n), for use of the building at 2118 LeRoy Place, NW (the “Building”) by a nonprofit organization, the Federation of State Medical Boards (“FSMB”). In her voicemail, Anne relayed to me that she had spoken to your office and she represented to me that you had taken a certain position on two specific issues. I have presumed, for purposes of this response, that your position was accurately represented to me. Below herein is my response.

Issue #1 – Requirement of an Existing Residential Building.

Section 203.1(n) provides that one of the uses included in the list of uses permitted by special exception is:

“Use of existing residential buildings and the land on which they are located by a nonprofit organization for the purposes of the nonprofit organization.”

Anne stated in her message that: *“Subtitle U Section 203.1(n) is specifically about the use of an existing residential building and since the property was most recently used as a chancery, the Zoning Administrator has said that a chancery is not considered a residential use and the proposed use would not qualify.”*

Since I was not part of any discussions leading up to your determination on this issue, I am not aware of the rationale behind the decision, or on what information or legal sources you relied in making this decision. I presume from Anne’s message that your position is that in order for the FSMB to be able to file for special exception approval pursuant to Section 203.1, the Building at 2118 LeRoy would have to currently be used for residential use.

The D. C. Court of Appeals, however, has ruled emphatically that a building is *not* required to house an existing (or even a recent) residential use in order to qualify for this special exception. In fact, in making that ruling, the Court also noted that at least five (5) such cases (as of 1990) had been approved by the BZA. In *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023 (1995), the Court of Appeals considered the BZA’s approval in BZA Order No. 15555, in which the Board approved a special exception

request for a nonprofit organization to use the building located at 2110 LeRoy Place, NW. The most recent use of that building had been as office space by the Italian Embassy's military attaché.¹

In making this ruling, the Court ruled:

“Petitioners maintain, and we agree, that only “existing residential buildings” may be converted to office use by a non-profit organization under 11 DCMR §217.1. We part company with petitioners, however, over their assertion that a building must be both zoned for residential use and actually used for residential purposes in order to qualify under section 217.1. **Instead, we sustain the Board's conclusion that the phrase “existing residential buildings” requires only that a structure be residentially zoned, not that it be in actual use as a residence, in order to qualify for use by a non-profit organization.** [Emphasis added.] As the Board explained in its order: The Board has previously applied the provisions of 11 DCMR [§ 217.1] to residentially zoned buildings which were not devoted to residential use at the time of the Board's consideration of the cases. The Board believes that the intent of the Zoning Regulations was to permit both the conversion of residential uses and the continuance of non-residential uses subject to Board review and approval.” *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023,1033 (1995).

The subject building located at 2118 LeRoy Place, NW, was most recently, and for the past 70 years, used as a chancery by the Columbian government. It is in the R-3 zone district - a residential zone. In accordance with at least five (5) previous BZA decisions, and this above ruling by the Court of Appeals, the Building certainly qualifies for the special exception use pursuant to Section 203.1(n). We believe that this issue is not a threshold, certification issue meant for input by the Zoning Administrator, as the issue is a substantive issue to be decided by the BZA. However, considering Anne's message, we would appreciate receiving assurance from you that the Zoning Administrator's office will comply with the decision of the Court of Appeals on this issue – if and when the Applicant comes before DCRA with a building permit and/or certificate of occupancy application.

Issue #2 – The Applicant Does Not Qualify as a Nonprofit Organization.

Also from Anne's voicemail, she states that: “Matt LeGrant has said that an organization chartered as a 501(c)(6) does not qualify as a nonprofit for U-203.1(n) purposes.” Like Issue #1, we believe that whether or not the FSMB qualifies as a nonprofit for U-203.1(n) purposes is a substantive matter for the BZA to decide – and of course for the Office of Planning to weigh in on – but is not a threshold issue of certification for the Zoning Administrator's office. In other words, if the BZA approves Application No. 19659, then it has effectively ruled on the Applicant's qualification as a nonprofit organization for purposes of U-203.1(n) (in addition to Issue #1); and it is not within the Zoning Administrator's authority to overrule the BZA – or the Court of Appeals - on this issue.²

¹ From the opinion: “Mrs. Cullen and her family have owned the building for more than fifty years, during which time they have leased it to various tenants, mainly foreign governments. The most recent tenant was the government of Italy, which used the building as office space for its embassy's military attaché. The Italian government vacated the premises in May 1990.”

² It is the Board, not the Zoning Administrator, which has final administrative responsibility to interpret the zoning regulations. See D.C.Code § 5-424(g)(4) (1988); *Keefe Co. v. District of Columbia Bd. of Zoning Adjustment*, 409 A.2d at 625.

At any rate, substantively on Issue #2, the Federation of State Medical Boards does indeed safely qualify as a nonprofit organization for purposes of U-203.1(n), and therefore qualifies for use pursuant to this special exception approval, as further explained herein.

No Strict Exclusion of 501(c)(6) Organizations, and No Strict 501(c)(3) Requirement.

Although Anne did not say so in her message to me, I have assumed that in saying that a 501(c)(6) does not qualify for this relief, she also meant to relay that only 501(c)(3) organizations do qualify. Forgive me if this assumption is wrong, but the discussion below applies in any case. Also, similar to Issue #1, I am unaware of the basis for your rationale; or on what law, precedent, or other sources you have relied.

In our research, we have found no language, either in the Zoning Regulations or in any applicable precedent, which directs that *only* 501(c)(3) nonprofit organizations can qualify for this special exception. Nor have we found any language which directs that 501(c)(6) nonprofit organizations are specifically excluded from qualifying for this special exception.

The Applicant Meets the Definition of Nonprofit Organization.

Assuming that you have considered the definition of “Nonprofit Organization” in the Zoning Regulations to be a factor in your decision, we note that this Applicant meets that definition, without qualification. The definition provides that a nonprofit organization is:

“An organization organized, registered with the appropriate authority of government, and operated exclusively for religious, charitable, literary, scientific, community, or educational purposes, or for the prevention of cruelty to children or animals; provided that no part of its net income inures to the benefit of any private shareholder or individual.”

The Applicant’s Articles of Incorporation provide that:

“The corporation is organized exclusively for scientific and educational purposes, and its activities shall include the furtherance of the following objects and purposes:..” [Emphasis added.]

The Articles further provide that:

“To conduct its affairs, the corporation shall have and exercise all of the powers enumerated in Section 21-1904, R.R.S. 1943, together with any and all powers granted by the Nebraska Nonprofit Corporation Act and the laws of the State of Nebraska which may be necessary or convenient to carry out the purposes for which the corporation is organized, **provided such acts and powers are in furtherance of the educational and scientific purposes of the corporation** and provided further that no substantial part of the activities or funds of the corporation shall be devoted to carrying on propaganda or otherwise attempting to influence legislation and the corporation shall not participate or intervene in any political campaign on behalf of any candidate for public office.” [Emphasis added.]

Furthermore, as a 501(c)(6) nonprofit organization, the FSMB is prohibited from having any part of its net income inure to the benefit of any private shareholder or individual. Considering these two defining characteristics, the FSMB satisfies the definition of a nonprofit organization under the Zoning Regulations. The FSMB is organized exclusively for scientific and educational purposes, and no part of its net income inures to the benefit of any private shareholder or individual.³

It is worth noting, as well, that the FSMB is organized for and devoted to matters involving the protection of the public health, regarding its scientific and educational mission serving state medical licensing agencies. This is not a business league serving members which are commercial enterprises. This organization's members are the 70 professional medical licensing boards run by "the District of Columbia, the several states of the United States and its territories and insular possessions."

The BZA Has Approved Organizations other than 501(c)(3) Organizations.

In past decisions for this special exception, the BZA has approved nonprofit organizations which were *not* organized as 501(c)(3) organizations.⁴ In those cases, there was never any discussion of a strict 501(c)(3) requirement or of any waiver or variance from such a requirement. At least one of those organizations was a 501(c)(6), the National Indian Gaming Association. In fact, we have found no BZA cases, whether for 501(c)(3)'s or otherwise, which have claimed that 501(c)(3) status was a requirement for qualification as a nonprofit organization for purposes of U-203.1(n) (or its predecessor citations). From the cases we did locate, we found a single reference to Section 501(c)(3), regarding the Cato Institute, in BZA Order No. 13419. Ironically, in that case, the BZA first approved a lobbying organization – The Texas Governor's federal lobbying arm – and then 28 years later, in 2009, approved the same property for use by the National Indian Gaming Association, a 501(c)(6). Any attempt to use that one reference as a precedent would have to explain why that same property was approved for two separate nonprofit organizations which were *not* 501(c)(3) organizations.

Conclusion

Considering the information above, we respectfully request that you rescind your apparent determination, as communicated to the Office of Planning, and provide us an assurance that you will follow the existing law regarding the two issues noted above. It is of critical importance that you relay this information to the Office of Planning as soon as possible, as they are about to issue their report for this case, and I fear that OP will issue a report which ignores this long-established precedent and incorrectly interprets the two above provisions.

Sincerely,

³ While the definition of a 501(c)(3) organization, under the Internal Revenue Code, has similar language to the definition in the Zoning Regulations, nowhere in the Zoning Regulations (nor in BZA case law) does it provide that a nonprofit organization is required to be organized as a 501(c)(3) for purposes of U-203.1.

⁴ Most recently (December, 2015), in BZA Order No. 19131, the Board approved, and the Office of Planning supported, special exception approval for Delta Sigma Theta Sorority, Inc., a 501(c)(7) organization. In BZA Order No. 17985, the Board approved, and the Office of Planning supported, special exception approval for the National Indian Gaming Association, a 501(c)(6) organization.

Matthew Le Grant
January 16, 2018
Page 5

Sullivan & Barros, LLP

A handwritten signature in black ink that reads "Martin P. Sullivan". The signature is written in a cursive style with a large, prominent initial "M".

By: Martin P. Sullivan, Esq.

cc: Anne Fothergill, OP

Exhibit F

ELLEN M. McCARTHY

Ms. McCarthy has over forty years of experience in the planning field. She currently teaches in the graduate Urban Planning Program at Georgetown University and consults with a variety of private development companies and non-profit organizations on land use, zoning, affordable housing and economic development issues. She has been accepted as an expert witness in zoning, planning and land use by both the DC Zoning Commission and the Board of Zoning Adjustment.

Previously, she worked for several DC law firms, consulting with developers and large institutions regarding planning and land use issues. Her clients included The Trump Organization, Madison Square Garden, the Tabard Inn, Vornado, the D.C. Public Library, Great Gulf DC and National Geographic.

She served as Interim Director of the DC Office of Planning in the Gray Administration, and was Deputy Director and then Director at the DC Office of Planning for seven years in the Williams Administration, overseeing the completion of the first new Comprehensive Plan for the District of Columbia in more than 20 years, which was unanimously adopted by the City Council. She also revamped the zoning and historic preservation operations of the office.

Earlier in her career, she had her own national practice in land use and transportation planning, followed by several years as the Executive Director of the D.C. Downtown Partnership, a public/private partnership established to foster the revitalization of the traditional Downtown area of Washington. Prior to that, she worked in transportation planning in Miami, Florida, Hartford, Connecticut and Washington, D.C.

Ms. McCarthy holds a Master's Degree in City Planning from Harvard University. She graduated Phi Beta Kappa and with High Honors from the University of Maryland.

She is an active associate member of the Urban Land Institute, currently is a member of the Advisory Council for the DC Office of the Local Initiatives Support Corporation (LISC) and has served on the boards of numerous planning, preservation and affordable housing organizations.

Tab B

DeBear, Eric J.

From: Mazo, Samantha L.
Sent: Friday, January 19, 2018 2:55 PM
To: DeBear, Eric J.
Subject: FW: Response to Apparent Determinations on 2118 LeRoy Place NW - BZA # 19659
Attachments: RE: BZA Case 19659

Importance: High



Samantha Mazo
Of Counsel | Cozen O'Connor
1200 19th Street NW | Washington, DC 20036
P: 202-747-0768 F: 202-683-9390 C: 202-246-6660
[Email](#) | [Bio](#) | [Map](#) | [cozen.com](#)

From: Tondro, Maximilian (DCRA) [mailto:maximilian.tondro@dc.gov]
Sent: Thursday, January 18, 2018 10:31 PM
To: Mazo, Samantha L. <SMazo@cozen.com>
Cc: Moldenhauer, Meridith <MMoldenhauer@cozen.com>
Subject: Fw: Response to Apparent Determinations on 2118 LeRoy Place NW - BZA # 19659
Importance: High

Samantha,

I apologize for not responding earlier - please see the attached email stating our position to Marty and to OP. If you have any questions, please let me know.

Best,
Max

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Government of the District of Columbia
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From: Tondro, Maximilian (DCRA)

Sent: Thursday, January 18, 2018 10:28 PM

To: Martin Sullivan

Cc: Fothergill, Anne (OP); Alexandra Wilson; LeGrant, Matt (DCRA)

Subject: RE: Response to Apparent Determinations on 2118 LeRoy Place NW - BZA # 19659

Mr. Sullivan,

I am responding on behalf of Mr. LeGrant, the Zoning Administrator (“**ZA**”), to your below email and its attached documents, which you sent in response to the attached January 12, 2018 email from the ZA to Ms. Fothergill at the Office of Planning (the “**ZA email**”) regarding whether your client qualified for relief under Section U-203.1(n) (quoted below). The ZA has found your email and its attachments persuasive and hereby withdraws the ZA email for the following reasons.

The ZA email responded to two issues raised by the counsel for opponents of your client's BZA application (19659) regarding Section U-203.1(n) which authorizes special exception relief for the “Use of existing residential buildings and the land on which they are located by a nonprofit organization for the purposes of the nonprofit organization ...”. The two issues raised were:

- (1) does the prior use of your client's property at 2118 Leroy Place NW as a chancery bar the property from qualifying as an "existing residential building"; and
- (2) does your client's status as a IRC 501(c)(6) entity qualify it as a "nonprofit organization" as considered by the Zoning Regulations, or is that term limited to IRC 501(c)(3) entities?

1 - "Existing residential building" -

The ZA agrees with your assertion that this issue is governed by *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1033 (1995), where the D.C. Court of Appeals upheld the BZA's established interpretation of "existing residential building" to include any building in a residential zone and not the more restrictive interpretation that this term only included buildings actually used for residential purposes. Therefore the ZA withdraws his prior statement in the ZA email that focused on the actual prior use of your client's property.

2 - "non-profit organization" -

Having reviewed the Articles of Organization of your client, the ZA concurs that your client, which "is organized exclusively for scientific and educational purposes," appears to meet the requirements of a "non-profit organization" as defined by the Zoning Regulations as an organization "organized ... and operated exclusively for ... scientific ... or educational purposes". The Zoning Regulations' definition of "non-profit organization" does not refer to any particular type of IRS-recognized nonprofit organization, and the BZA has not established any ruling that Section U-203.1(n) only applies to 501(c)(3) entities or does not apply to 501(c)(6) entities. Furthermore, as you have indicated, the BZA has previously granted this special exception relief to nonprofit organizations that were not exclusively IRC 501(c)(3) entities and indeed does not appear to have ever considered this issue of whether IRC classifications are relevant to determining which entities are qualified as "non-profit organizations" under the Zoning Regulations. Therefore the ZA withdraws his prior statement in the ZA email that did not have the benefit of reviewing your client's Articles of Incorporation.

Finally, having considered this particular case further, the ZA believes that it is up to the BZA, not the ZA, to determine if your client qualifies for this particular special exception. Although this application is self-certified, the ZA believes that it is the BZA's role to determine if your client, as the applicant, qualifies for this special exception relief under Section U-203.1(n). The ZA therefore wants to clarify that he will respect the BZA's determination that your client qualifies, or does not qualify, for the special exception relief under Section U-203.1(n).

Best,
Max

Maximilian L.S. Tondro | Assistant General Counsel
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From: Martin Sullivan [<mailto:msullivan@sullivanbarros.com>]
Sent: Tuesday, January 16, 2018 1:43 PM
To: LeGrant, Matt (DCRA); Tondro, Maximilian (DCRA)
Cc: Fothergill, Anne (OP); Alexandra Wilson
Subject: Response to Apparent Determinations on 2118 LeRoy Place NW - BZA # 19659

Hi Matt and Max,

Here is my written response to the issues raised by Anne Fothergill in her voicemail to me last week for BZA #19659, in which she relayed to me that you had found that the FSMB could not qualify for nonprofit office use under U-203.1(n) because (1) the subject building is not currently used for residential, and (2) a 501(c)(6) doesn't qualify.

Quick summary – the Court of Appeals has decided the first issue in our favor, without question. On the second issue, the BZA has decided that one in our favor, on several occasions, and in all other respects this organization clearly meets the definition of a nonprofit organization under the Zoning Regulations.

I am requesting your urgent attention to these two issues, so that Anne can issue her report with the correct information.

Regards,
Marty

Martin P. Sullivan
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202-503-1704 (D)

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