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Via Electronic & First Class Mail

February 28, 2022

Mr. J. Peter Byrne
Mayor's Agent Hearing Officer
Historic Preservation Office
1100 4th Street, SW, Suite E650
Washington, DC 20024

Re: HPA No. 21-219 – 3060 16th Street, NW
Kenesaw-Renaissance Building Balcony Replacement

Dear Mr. Byrne:

I am writing as counsel to the DC Preservation League and Historic Mount Pleasant (collectively, "Intervenor") as party to the above-referenced matter.

The Renaissance Condominium Association (the "Association") and the Kenesaw-Phoenix Cooperative, Inc. (the "Co-op" and together with the Association, collectively, "Applicant"), previously submitted a request for a hearing by the Mayor's Agent for clearance of a demolition permit to remove twenty-five (25) original balconies (collectively, the "Balconies") from the historic building located at 3060 16th Street, N.W. (Square 2594, Lot 175) and known commonly as the "Kenesaw" (the "Building"). The hearing was originally scheduled for December 17, 2021 and, at the request of Applicant, was rescheduled for January 28, 2022 and, at the request of Intervenor, rescheduled for February 25, 2022. The hearing was held on February 25, 2022 (the "Hearing").

Prior to the Hearing, Intervenor had twice requested dismissal of the above-referenced matter for failure to state grounds upon which the Mayor's Agent could find demolition of the Balconies consistent with the Act and for failure to state a claim or meet the statutory requirements for a claim of unreasonable economic hardship, more specifically, the failure to provide the individual financial data required under Section 6-1104(g) of the Act. At the Hearing, you held the motions in abeyance pending the completion of the Hearing. After an extensive Hearing, the Applicant failed again to meet even the minimum requirements to state a claim that demolition of the Balconies is consistent with the purposes of the Act, to state a claim that the low-income residents of the Building would suffer an unreasonable economic hardship, or to satisfy the statutory requirements of Section 6-1104(g) of the Act. At multiple points in the Hearing, Intervenor asked Applicant to supply financial data specific to the low-income residents of the Building, as required by Section 6-1104(g) of the Act, but Applicant refused. Applicant refused to discuss anything beyond vague hypotheticals using misleading figures and calculations.

The testimony of Historic Preservation Specialist Timothy Dennee on the standards of the Act and their application to the Balconies leaves no doubt that removal of the Balconies would result in removal of character-defining features of the Building with no preservation benefit and would thus be inconsistent with the purposes of the Act. Applicant's references to irrelevant documents cannot

alter the fact that the current state of the Balconies is due to 35 years of deferred maintenance. Applicant admitted at the Hearing that inspections until recently had consisted of simply "eyeball" inspections from ground level. No major work has been performed on the Balconies since the building was acquired by Kenesaw Cooperative Association in 1985. The preservation losses from allowing the demolition of the Balconies and replacement with Juliet balconies is apparent and well-detailed by Mr. Dennee at the Hearing. Applicant failed to state any preservation benefits that would accrue by allowing the Juliet balconies to be installed. The only benefits offered by Applicant related to the preservation of other character-defining features of the Building, features that Applicant is already required to maintain and, with respect to the deteriorating cornice and façade, as evidenced at the Hearing, will be repaired regardless of whether the Balconies are replaced with full reproductions or Juliet balconies. Applicant failed to state any preservation benefits that would occur by approval of the installation of Juliet balconies, only losses that would occur from the loss of the Balconies, and thus failed to state a claim that the proposal is consistent with the purposes of the Act.

Neither has Applicant stated a claim for relief for unreasonable economic hardship. Applicant continues to fail to identify the low-income owners that would be affected by your ruling. Section 6-1104(g) of the Act requires that specific financial information be provided for affected low-income owners, including without limitation "(i) The amount paid for the property, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased; (ii) The assessed value of the land and improvements thereon according to the 2 most recent assessments; and (iii) Real estate taxes for the previous 2 years." Applicant has provided this information for the unit owners outside the Cooperative but not for 24 of the 29 units within the Cooperative, in which most low- and moderate-income owners are believed to be located. Applicant has also failed to identify which unit owners are seeking relief as a matter of unreasonable economic hardship, making it impossible for Intervenor to respond or for you to make an informed ruling.

Applicant's suggestion that this information is either unavailable to Applicant or not necessary for a resolution of the issues now before you must be rejected. In fact, the missing information should be readily available to the Applicant. Applicant called as a witness (not disclosed on Applicant's witness list) Sheila Phillips, Property Manager for CIH Properties, Inc., which organization was also identified as the source of the suggestion for the unusual mixed coop/condo structure that was created. Indeed, C.I.H. Ventures, Inc., was listed as the return address when the Kenesaw Cooperative Association recorded both the Declaration of Renaissance Condominium and its Bylaws in August 1985 (DC Recorder of Deeds Docs. 8500027535 and 8500027536). Ms. Phillips prepared and listed herself as Principal Officer of Kenesaw Phoenix Coop on the recent Certificate of Resale for Coop Unit 312 attached hereto as Exhibit A, submitted for inclusion in the record. When Intervenor attempted to question Ms. Phillips about other Coop sales, Ms. Carolyn Brown objected to the inquiry, arguing that the question was outside the scope of her direct testimony and therefore not allowed. Why is Applicant refusing to share the information that is explicitly required to be presented by Section 6-1104(g) of the Act?

Moreover, at least some of the missing information is, in fact, a matter of public record, and is contained in Exhibit A to the Multifamily Deed of Trust dated January 30, 1985 (ROD Document 8500004052), attached hereto as Exhibit B, submitted for inclusion in the record. Exhibit A thereto lists all the original purchasers of units in the Coop by name along with the unit number and sales price. CIH Properties, Inc., and thus the Coop, surely has in its possession data on the Co-op units at least as robust as that included in the public record. Nevertheless, Applicant failed to provide any such data and resisted multiple attempts to obtain such information at the Hearing. Prior Mayor's Agent cases have dismissed claims where this information was not provided. See, e.g.,

HPA No. 1991-43 (In re: 3153 19th Street NW) where the applicant, a Mount Pleasant homeowner, failed to provide the required information after several extensions of time. In that case, the Mayor's Agent found that the "failure to comply with the original filing requirement . . [was] by itself sufficient grounds to deny the appeal" but also noted the failure to file the required documents by two subsequent agreed extensions of time. In HPA 1994-481 (In Re: Marymount University), the Mayor's Agent rejected an attempt to substitute the testimony of the treasurer for the statutorily required documentation and denied the claim of economic hardship. In the present case, evaluation of a claim for unreasonable economic hardship is impossible if the statutorily-required data is not provided for the unit owners seeking such relief.

Applicant attempted instead to satisfy the statute through the use of misleading hypotheticals and irrelevant data. Applicant repeatedly attempted to inflate the effects of the Balcony replacements by including the costs of repairs to the cornice and façade of the Building, repairs that are not the subject of the above-referenced case and will be completed regardless of the ruling here. Applicant, also, in multiple instances at the Hearing, compared the cost of full reproduction to the cost of Juliet balconies, but failed to take into account the effect of grant funding that has already been approved for 16 residents of the Building. When Intervenor inquired on this discrepancy, Applicant was forced to admit that Applicant's proposal would actually result in *greater* economic hardship on the low-income owners of the Building. At one point in the Hearing, as a result of a line of questioning you pursued, Applicant admitted that Applicant is pursuing the Juliet balcony replacement plan to benefit the higher-income residents and investment owners that control nearly 42% of the units, not the low-income owner-occupied residents of the Building. By pursuing the Juliet balcony replacement, Applicant's efforts have only resulted in delay, increased costs and the jeopardization of HPO grant funding, all to the great detriment of the low-income residents of the Building. Further delay will only result in even greater harm to the low-income residents of the Building.

In consideration of the foregoing, Intervenor requests a ruling on the motions to dismiss that were held in abeyance and requests that you dismiss the above-referenced case for failure to state a claim upon which relief can be granted and for failure to comply with Section 6-1104(g) of the Act.

Very truly yours,

Nicholas A. Carson /RK

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