



February 26, 2018

Meridith Moldenhauer

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

**Re: BZA Case No. 19705
Applicant's Opposition to Request for Party Status of LDP Acquisitions LLC**

Chairperson Hill and Honorable Members of the Board:

On behalf of Applicant Madison Investments, LLC (the "Applicant"), please find enclosed the Applicant's Opposition to Request for Party Status of LDP Acquisitions LLC (BZA Ex. No. 39). As set forth in the Applicant's Opposition, the Applicant respectfully requests that the Board waive its time requirements stated in Subtitle Y § 404.2 and decide this party status request as a preliminary matter at the Board's next scheduled hearing on February 28, 2018. This would allow the Board to clarify the zoning issues in advance of the March 7, 2018 hearing date on this application. We appreciate the Board's consideration of this request and we thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

BY: Meridith H. Moldenhauer

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February, 2018, a copy of the foregoing Opposition to Request for Party Status was served, via electronic mail, on the following:

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

Advisory Neighborhood Commission 1B
c/o James A. Turner, Chairperson
1B09@anc.dc.gov

Advisory Neighborhood Commission 1B
c/o Jon Squicciarini, SMD Commissioner
1B04@anc.dc.gov

Vernon W. Johnson III
Nixon Peabody
799 Ninth Street NW, Ste. 500
Washington, DC 20001
vjohnson@nixonpeabody.com



Meridith H. Moldenhauer

BEFORE THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

**APPLICATION OF
MADISON INVESTMENTS, LLC**

**BZA APPLICATION NO. 19705
HEARING DATE: MARCH 7, 2018**

**APPLICANT MADISON INVESTMENTS, LLC'S OPPOSITION TO PARTY STATUS
REQUEST OF LDP ACQUISITIONS, LLC**

On behalf of the Applicant, Madison Investments, LLC (the "Applicant"), please consider the following opposition to the Request for Party Status filed by "LDP Acquisitions LLC" ("LDP"). As will be explained below, LDP does not meet the standard to obtain party status as set forth under Subtitle Y § 404; accordingly, LDP's Request for Party Status should be denied.

I. The crux of LDP's Request for Party Status is outside the Board's statutory authority and not germane to this application for zoning relief

Simply put, LDP's allegations concerning a contractual dispute are not within the purview of the Board's authority prescribed by D.C. Code § 6-641.07 and the Zoning Regulations, and LDP's basis for requesting party status is not germane to the zoning relief requested as part of this application (the "Application"). Specifically, LDP alleges that it "intends to acquire" the property located at 2118 14th Street NW (Square 203, Lot 10) (the "Smucker's Property"), which is part of the Application.¹ LDP's alleged interests in the Smucker's Property are presently in litigation before the Superior Court of the District of Columbia in a case styled as *LDP Acquisitions LLC v. Felix Nelson Ayala, et al.*, Civil Action No. 2017 CA 006699 B.

Importantly, the Board's jurisdictional authority is limited to the power to hear and decide requests for special exceptions and variances, appeals from zoning decisions, and other special questions put to it by the Zoning Commission. *See* DC Code §§ 6-641.07(g)(1-3), 6-

¹In addition to the Smucker's Property, this Application concerns properties located at 2114-2116 14th Street NW, 2124 14th Street NW, 1400 W Street NW, and 1403 V Street NW.
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641.07(d). As the Board has previously recognized in BZA Case No. 18725, the Court of Appeals has repeatedly stated its reluctance to “read into a statute powers for a regulatory agency which are not fairly implied from the statutory language, since the agency is statutorily created.” *See Spring Valley Wesley Heights Citizen Ass’n v. District of Columbia Bd of Zoning Adjustment*, 644 A.2d 434, 436 (D.C. 1994) (citing *Chesapeake & Potomac Tel. Co. v. Public Service Comm’n of District of Columbia*, 378 A.2d 1085, 1089 (D.C. 1977)).

LDP indiscreetly requests that the Board improperly inject itself into this contractual dispute between LDP and the current owner of the Smucker’s Property. Yet, the Board does not have the statutory authority to decide such a contractual dispute because the contractual dispute is not relevant to the special exception zoning relief requested by the Applicant. The Board has previously restricted the testimony and discussion of concerns raised that were outside of the Board’s jurisdiction. The Board has also refused to postpone cases due to pending litigation, while narrowly interpreting the Board’s authority to address the application before it.

LDP challenges the Office of Zoning’s administrative ability to accept the Applicant’s Application, but cloaks this challenge in the guise of a Request for Party Status. However, the Applicant, as the authorized agent, is permitted by the Zoning Regulations to file the Application. *See* Subtitle Y § 300. LDP’s alleged contractual dispute with the owner of the Smucker’s Property has no legal effect on the Applicant’s ability and right to file the Application on behalf of the Smucker’s Property owner.

Therefore, LDP’s Request for Party Status should be denied because the contractual dispute is not within the statutory purview of the Board, nor is the contractual dispute relevant to the pending Application. LDP incorrectly attempts to wedge a contractual dispute into this zoning arena.

II. The Applicant is authorized to file this Application by the current property owners

Notably, the Applicant submitted letters of authorization from each owner of the properties that are the subject of this Application, including the owner of the Smucker's Property. BZA Ex. No. 10. Pursuant to the authorization letters, the Applicant was authorized, under Subtitle Y § 200, to file the Application. The owners of the Smucker's Property have submitted affidavits, attached hereto at **Tab A**, testifying and reiterating that they have authorized the Applicant to file BZA Case No. 19705. Additionally, Martha's Table, which owns 2114-2116 14th Street NW and 2124 14th Street NW, has submitted a letter, attached hereto at **Tab B**, stating that it authorized the Applicant to file this Application and requesting that there be no delay in the Board processing this Application. Simply put, the Applicant has received the requisite authority, including from the owner of the Smucker's Property, to move forth with the Application for zoning relief.

III. LDP fails to meet the necessary conditions to be granted party status pursuant to Subtitle Y § 400

In order to be granted party status, LDP must "clearly" demonstrate that its "interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed **zoning action** than those of other persons in the general public." (emphasis added) *See* Subtitle Y § 404.13. In doing so, LDP must meet the specific criteria under Subtitle Y § 404.1(i). LDP fails to meet the criteria necessary to be granted party status.

Of particular note, the Zoning Regulations provide that requests for party status must include a reference to "the distance between the person's property and the property that is the subject of the application before the Board." *See* Subtitle Y § 404.1(i)(3). LDP does not currently own or occupy the Smucker's Property and the current ownership has authorized the Applicant to move forward with the Application. Furthermore, LDP lists its address as 1508 U Street, NW on Form 140 placing LDP more than 1,584 feet from the property. The Board has

continuously applied the 200-foot rule in denying party status. Therefore, LDP does not meet the requirement of Subtitle Y § 404.1(i)(3).

Additionally, LDP fails to identify the “environmental, economic, social, or other impacts” to LDP’s property that will result “if the action requested of the Board is approved or denied.” *See* Subtitle Y § 404.1(i)(4). There is no environmental, economic, social or other impact on LDP’s property if the Board grants or denies the Application. LDP’s “interest” in the Smucker’s Property is hypothetical and theoretical in nature, and LDP fails to establish a nexus between the zoning relief sought by the Applicant and the unique impacts such relief would have on LDP. Thus, LDP does not meet the fourth condition of the party status criteria.

Similarly, LDP fails to explain how it’s claimed “interest” would “be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.” *See* Subtitle Y §404.1(i)(5). Again, LDP’s alleged “interest” has absolutely no relevance to zoning action pending before the Board. LDP does not live or operate by the Property and, therefore, LDP would not be uniquely or significantly affected by the zoning relief requested in the Application. As such, LDP fails to meet the fifth condition of the party status criteria.

IV. LDP’s alleged interest in the Smucker’s Property will not be effected by the Application

It must be noted that LDP’s alleged contractual interest in the Smucker’s Property will not be effected by the pending Application. If the Board grants the Application, the Board is simply **authorizing** the Applicant to construct the proposed project. An order of the Board remains valid for two years and would then expire if the proposed project does not come to fruition. *See* Subtitle Y § 702.1. The Board’s approval does not require the Applicant, or subsequent property owner, to construct the proposed project. Furthermore, the Board’s approval does not limit any current or future owner of the subject properties to file a different application before the Board or

to seek a matter-of-right permit application to DCRA. Accordingly, LDP's alleged interests, whether valid or not, are not "irreplaceable," as LDP claims, nor will LDP's alleged interests be effected by the Application.

V. Conclusion

In summation, the issues raised by LDP are not germane to BZA Case No. 19705 or within the Board's statutory authority and are best left for resolution with the Superior Court of the District of Columbia. The Applicant opposes LDP's Request for Party Status, and requests that the Board deny the Request for Party Status.

Finally, the Applicant respectfully requests that the Board decide LDP's Request for Party Status at its next schedule hearing on February 28, 2018. We request the Board waive their time requirements stated in Subtitle Y § 404.2 and address this matter as a preliminary matter on February 28, 2018 in order to clarify the zoning issues for the March 7th hearing. Resolving this improper party status request is in the interest of all parties and would not prejudice the rights of any party as required by Subtitle Y § 101.9.

Respectfully Submitted,
COZEN O'CONNOR



Meridith H. Moldenhauer
1200 19th Street, NW, 3rd Floor
Washington, D.C. 20036
202-747-0763

Tab A

AFFIDAVIT OF MARIA E. AYALA REGARDING 2118 14th STREET NW

I, Maria E. Ayala, first being duly sworn under oath and competent to testify as to all matters set forth, depose and say that I am over the age of 18 years old and hereby state the following:

1. I make this affidavit based on my personal knowledge.
2. Felix Nelson Ayala and I are the current owners of the property located at 2118 14th Street NW (Lot 10, Square 203) (the "Property") and have owned the Property since 1994.
3. As of the date of this affidavit, Felix Nelson Ayala and I have not sold the Property.
4. Felix Nelson Ayala and I authorized Madison Investments in writing to file BZA Case No. 19705 seeking zoning relief related to the Property.
5. The authorization letter is filed in BZA Case No. 19705 at Exhibit 10.
6. Felix Nelson Ayala and I are aware and familiar with pending BZA Case No. 19705 filed by Madison Investments.

Under penalty of perjury, I certify that I have examined this affidavit and that, to the best of my knowledge, it is true, correct, and complete.

Executed on this 23 day of FEBRUARY, 2018.

Maria E Ayala
Affiant

District of Columbia

SUBSCRIBED AND SWORN TO before me this 23 day of February, 2018.

Alessandra De La Jara
Notary Public

My commission expires:

Montgomery County, Maryland
Notary Public
Alessandra De La Jara
My Commission Exp 12/04/2020

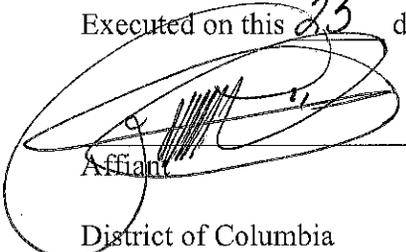
AFFIDAVIT OF FELIX NELSON AYALA REGARDING 2118 14th STREET NW

I, Felix Nelson Ayala, first being duly sworn under oath and competent to testify as to all matters set forth, depose and say that I am over the age of 18 years old and hereby state the following:

1. I make this affidavit based on my personal knowledge.
2. Maria E. Ayala and I are the current owners of the property located at 2118 14th Street NW (Lot 10, Square 203) (the "Property") and have owned the Property since 1994.
3. As of the date of this affidavit, Maria E. Ayala and I have not sold the Property.
4. Maria E. Ayala and I authorized Madison Investments in writing to file BZA Case No. 19705 seeking zoning relief related to the Property.
5. The authorization letter is filed in BZA Case No. 19705 at Exhibit 10.
6. Maria E. Ayala and I are aware and familiar with pending BZA Case No. 19705 filed by Madison Investments.

Under penalty of perjury, I certify that I have examined this affidavit and that, to the best of my knowledge, it is true, correct, and complete.

Executed on this 23 day of FEBRUARY, 2018.



Affiant

District of Columbia

SUBSCRIBED AND SWORN TO before me this 23 day of February, 2018.



Notary Public

My commission expires:

Montgomery County, Maryland
Notary Public
Alessandra De La Jara
My Commission Exp 12/04/2020

Tab B



February 23, 2018

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

Re: Board of Zoning Adjustment (“BZA”) Case No. 19705

Dear Chairperson Hill and Honorable Members of the Board:

I am the president and chief executive officer of Martha’s Table, Inc. Martha’s Table owns 2114-2116 14th Street NW and 2124 14th Street NW (collectively the “Property”). The Property is part of the pending BZA Case No. 19705. Martha’s Table has signed a binding purchase and sale contract to sell the Property to Madison Investments, LLC (“Madison”). Martha’s Table authorized Madison, as contract purchaser and as Martha’s Table’s agent, to apply to BZA for zoning relief for the Property.

Martha’s Table is selling the Property to Madison to facilitate the construction of a new Martha’s Table facility that will be located in Ward 8.

Martha’s Table, as the owner and authorizing agent, requests that the Board of Zoning Adjustment proceed with BZA Case No. 19705, and grant the relief Madison has requested, without delay.

Thank you for your time and consideration of our request.

Sincerely,
Martha’s Table, Inc.

By: 
Patty Stonesifer
President and Chief Executive Officer