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JPB@GDLLAW.COM

April 26, 2007

VIA HAND-DELIVERY

Ms. Ruthanne G. Miller
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W.
Room 200
Washington, D.C. 20001

RECEIVED
D.C. OFFICE OF ZONING
2007 APR 26 PM 4:06

Re: BZA Appeal 17591

Dear Ms. Miller:

This firm is counsel for the Appellant, MLW, LLC, in this Appeal of an October 19, 2006 decision of the Department of Consumer and Regulatory Affairs and/or Zoning Administrator (collectively, "DCRA").

The Appellant respectfully submits this Motion to Exclude the participation of DCRA in the May 1, 2007 hearing and submission of any untimely materials to the Board. Specifically, DCRA has forfeited its right to participate in this matter based on its failure and refusal to comply with the Board Rules for timely submission of pre-hearing materials and requesting party status.

The Appellant filed its Pre-Hearing Statement in a timely manner on April 17, 2007 (11 DCMR § 3112.10) and on the same day, twice provided electronic copies to several of DCRA's counsel including, Jill Stern, its General Counsel, and Assistant Attorney Generals Dennis M. Taylor and Andrew J. Saindon in accordance with the Board Rules. 11 DCMR § 3113.3(e) (Service by E-mail). Exhibit A. It is well established that any pre-hearing submission or response from DCRA was due no later than Tuesday, April 24, 2007. On Wednesday, April 25, 2007 having received nothing from DCRA, Appellant's counsel asked if anything had been filed

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17591
EXHIBIT NO. 13

Board of Zoning Adjustment
District of Columbia
CASE NO. 17591
EXHIBIT NO. 13

by DCRA. DCRA responded that nothing had been filed, but expected to do so without any indication when that might occur. Exhibit B.

In addition to having made no pre-hearing submission, DCRA has also failed and refused to comply with the Board's Rules under 11 DCMR § 3106.2 for appearance as a party and representation in this Appeal. Section 3106.2 clearly provides:

Except for the appellant, applicant, or the ANC, to participate as a party in a proceeding before the Board, any affected person shall file with the Board, not less than fourteen (14) days prior to the date set for the hearing... (Emphasis added).

DCRA's participation in this Appeal as a party, including presentation of evidence and witnesses and cross-examination, is not automatic, but must be requested in a timely manner. According to the Board's Docket in this case, DCRA was given timely notice of the Appeal (Docket Exhibit 6) and hearing, (Docket Exhibit 11), but has made no submission of any kind. Exhibit C.

DCRA's inability and unwillingness to comply with the Board's Rules is even more remarkable given the agency's role in enforcement of the Zoning Regulations and underscores the flawed decision making which is the subject of this Appeal. As a result, DCRA must be held strictly accountable. DCRA's conduct has prejudiced the Board's preparation for and timely adjudication of this Appeal and the Appellants' right to timely notice of DCRA's case and a fair hearing.

The Appellant filed this appeal on December 1, 2006 and has waited five (5) months for this hearing. DCRA's failure and refusal to comply with the Board's Rules can not be the basis for delaying the scheduled hearing or decision of this Appeal. To do so would be unreasonable and only serve to extend the extreme prejudice and harm already suffered by the Appellant at the hands of DCRA.

GREENSTEIN DELORME & LUCHS, P.C.

Ms. Ruthanne G. Miller

April 26, 2007

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For the foregoing reasons, DCRA should be excluded from submitting any pre-hearing materials or participating as a party in the hearing which should go forward as scheduled on May 1, 2007.

Thank you for your cooperation in this very serious matter.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.

By: 
John Patrick Brown, Jr.

JPB/prm

Enclosures

cc: Jill Stern, Esquire
Dennis M. Taylor, Esquire
Andrew J. Saindon, Esquire
Mr. Ed Solomon, ANC 2E
Mr. Bill Starrels, ANC 2E
MLW, LLC

EXHIBIT A

John Patrick Brown Jr.

From: Pamela R. McIntosh
Sent: Tuesday, April 17, 2007 4:11 PM
To: 'jill.stern@dc.gov'; 'dennis.taylor@dc.gov'; 'andy.saindon@dc.gov'
Cc: John Patrick Brown Jr.
Subject: On behalf of John Patrick Brown, Jr., Esq.
Attachments: BZA filing.PDF

Please find attached a BZA filing sent by John Patrick Brown, Jr. today, Tuesday, April 17, 2007.

***Pamela McIntosh
Assistant to John Patrick Brown, Jr., Esq.
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036***

John Patrick Brown Jr.

From: Pamela R. McIntosh
Sent: Tuesday, April 17, 2007 4:14 PM
To: 'jill.stern@dc.gov'; 'andy.saindon@dc.gov'; 'dennis.taylor@dc.gov'
Cc: John Patrick Brown Jr.
Subject: On Behalf of John Patrick Brown, Jr.
Attachments: BZA filing.PDF

Please see the attached filing to the BZA from John Patrick Brown, Jr.

Pamela McIntosh
Assistant to John Patrick Brown, Jr., Esq.

4/26/2007

EXHIBIT B

John Patrick Brown Jr.

From: Taylor, Dennis (DCRA) [Dennis.Taylor@dc.gov]
Sent: Wednesday, April 25, 2007 1:33 PM
To: John Patrick Brown Jr.; Taylor, Dennis (DCRA); Stern, Jill (DCRA)
Subject: RE: BZA Appeal 17591 for MLW

Pat,

Thank you in advance for sending a copy of your filing. I would expect to file something, but just what is filed will depend on what you as appellant file. I'll send you a copy when I do the filing.

Dennis

Dennis M. Taylor
Assistant Attorney General
(202) 442-8199

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From: John Patrick Brown Jr. [mailto:JPB@gdllaw.com]
Sent: Wednesday, April 25, 2007 1:29 PM
To: Taylor, Dennis (DCRA); Stern, Jill (DCRA)
Subject: RE: BZA Appeal 17591 for MLW

We filed a Prehearing Statement on April 17. I emailed a copy to Jill, but will forward one to you now.

Do you plan to file anything before the hearing on May 1?

Thanks, Pat

John Patrick Brown, Jr., Esq.
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administrator@gdllaw.com

THANK YOU.

4/26/2007

From: Taylor, Dennis (DCRA) [mailto:Dennis.Taylor@dc.gov]
Sent: Wednesday, April 25, 2007 1:27 PM
To: John Patrick Brown Jr.; Stern, Jill (DCRA); Taylor, Dennis (DCRA)
Subject: RE: BZA Appeal 17591 for MLW

Pat,

We haven't filed anything at this point. Have you?

Dennis

Dennis M. Taylor
Assistant Attorney General
(202) 442-8199

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From: John Patrick Brown Jr. [mailto:JPB@gdllaw.com]
Sent: Wednesday, April 25, 2007 1:22 PM
To: Stern, Jill (DCRA); Taylor, Dennis (DCRA)
Subject: BZA Appeal 17591 for MLW

Jill, Dennis:

Did you file anything in this case? Thanks, Pat

John Patrick Brown, Jr., Esq.
Greenstein DeLorme & Luchs, P.C.
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administrator@gdllaw.com

THANK YOU.

4/26/2007

EXHIBIT C

EXHIBIT LOG

CASE NO. # 17591

APPLICANT

Exhibit No.	Nature of Exhibit	Staff Init.	Exhibit Date	No. Pages	No. Copies	Date Rec'd
1.	Ltr. fm. John Patrick Brown Jr. w/enclosed documents, RE: APPEAL of MLW, LLC	EB	12/1/06	235	20	12/1/06
2.	COPIES of Filing Fee Check and BZA Receipt	"	"	1	-	-
3.	MEMO to THE DIRECTOR - OP, RE: APPEAL filed	"	12/4/06	1	-	-
4.	MEMO to ANC 2E, RE: APPEAL filed	"	"	2 sided	-	-
5.	MEMO to ANC 2E03, RE: APPEAL filed	"	"	"	-	-
6.	MEMO to Bill CREWS, Zoning Admin. - DCRA, RE: APPEAL filed	"	"	1	-	-
7.	MEMO to City Council Member for Ward 2, RE: APPEAL filed	"	"	1	-	-
8.	Letter to MLW, LLC	BW	2-28-07	2	-	-
9.	Letter to Patrick Brown	BW	2-28-07	2	-	-
10.	Letter to ANC 2E	BW	2-28-07	3	-	-