

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

**APPEAL OF  
WALTER PARRS, ET AL**

**BOARD APPEAL NO. 18257  
HEARING: NOVEMBER 1, 2011  
ANC 2E**

**INTERVENOR'S MOTION TO POSTPONE HEARING**

Intervenor Euromarket Designs, Inc., d/b/a CB2 ("CB2") respectfully requests that the Board postpone the hearing on the appeal scheduled for November 1, 2011. Appellants have failed to comply with the filing and service requirements set forth in Sections 3112 and 3111 of the Zoning Regulations. These failures prejudice the Intervenor and leave this Board exposed to later complaints from the entities not properly served, because they did not receive the required notice of Appellants' position. Postponing the hearing could correct these problems and save the parties and the Board time and expense.

Intervenor asked Appellants last week and again yesterday whether they would consent to a postponement in order to address these problems. Appellants said, "no."

**I.**

**The Appellants Did Not Properly and Timely File Their Prehearing Statement in  
Accordance with Section 3312 of the Zoning Regulations**

The Zoning Regulations require that no later than 14 days before the date of the hearing for an appeal, an appellant shall file with the Board any additional statements, information, briefs, reports (including reports or statements of expert and other witnesses), plans, or other materials that the appellant may wish to offer into evidence at the hearing. 11 DCMR 3112.10. The hearing for this appeal is scheduled for November 1, 2011, which means that the deadline for the Appellants to file their prehearing statement and supporting document with the Board was October 18, 2011.

Appellants did not file or serve their prehearing statement. Instead, on October 18, Appellants filed a prehearing statement with the wrong case number, meaning it was not shown as docketed in this case. Appellants not only gave the caption the incorrect number, but they compounded the problem by failing to serve copies of the statement on any of the parties or the property owner or the ANC, except that a copy was apparently mailed to the Zoning Administrator, Matthew Le Grant, although not to Director of DCRA, Nick Majett, or any attorney for the District.

Since Intervenor believed from the review of the docket that Appellants had decided not to file the allowed prehearing statement, CB2 prepared and filed its statement in that light. CB2 timely filed its statement only to then be told that Appellants had purported to file a statement. Appellants did not correct and serve the prehearing statement until October 26, 2011, less than a week before the hearing.

Yesterday afternoon, the day before this hearing, Appellants filed another untimely submission, this one captioned "Appellants' Supplemental Pre-Hearing Statement." This document purports to raise a new basis for the appeal; one that was not asserted in the notice of appeal or in the first prehearing statement, namely a challenge to the existence of a "rear yard" for the building.

## II.

### **The Appellants Did Not Timely Serve the Parties to the Case in Accordance With Section 3111 of the Zoning Regulations**

To be clear, CB2 is moving for postponement reluctantly because it does not want to further delay or complicate what is in fact a straightforward application of established precedents. But we are concerned that the multiplication of mistakes by Appellants prejudices both the orderly presentation of the appeal and the rights of parties—especially the property owner and the ANC—who did not receive timely notice of the Appellants' position.

The Zoning Regulations require that any paper required to be served upon a party shall be served upon that party, or upon the representative designated by that party or by law, to receive service of papers. 11 DCM 3111.1. In this appeal, the Zoning Administrator, the Intervenor, and Advisory Neighborhood Commission ("ANC") 2E (the "ANC") are all parties to the case, for which timely service of the Appellants prehearing statement was required. According to the Appellants' Certificate of Service, on October 18, 2011, the Appellants served a copy of their prehearing statement on the Zoning Administrator only.

Under Section 3199 of the Zoning Regulations, a "party" is defined as (1) the appellant; (2) the person whose administrative decision is the subject of the appeal; (3) the owner, lessee, operator, or contract purchaser of the property involved in the administrative decision, if not the appellant; (4) the ANC for the area within which the property that is the subject of the appeal is located; and (5) any other person who is permitted by the Board to intervene pursuant to § 3112.15. Yet, the Appellants failed to serve anyone except Mr. LeGrant, who is one of two officials whose decisions are the subject of the appeal. Leaving aside the failure to serve Intervenor, the other persons who were not served, such as the ANC and the property owner, might later object to any decision based on the lack of timely notice. This creates uncertainty for the Board and for CB2.

This failure to serve the prehearing statement has been compounded by the service yesterday of a new claimed basis for appeal. Not only did the Appellants not request leave to file a "supplemental prehearing statement," but the filing is really a request to amend the notice of appeal and therefore the notice of hearing—all well outside the time limits. This adds yet another level of uncertainty and impropriety in proceeding on November 1, 2011. And, as noted above, Appellants have twice refused requests to jointly ask to postpone the hearing to address the problems that the Appellants, alone, have created.

### III.

#### **Allowing the Hearing to Proceed in Light of the Appellants' Procedural Errors Frustrate the Intent of the Filing and Service Requirements in the Zoning Regulations**

In addition to the procedural problem and the notice issues caused by Appellants, there is a fundamental unfairness at work. CB2 checked the docket in this case before filing its statement and shaped the scope of its filing in light of the apparent absence of any prehearing statement filed by Appellants. The fact that the Appellants failed to comply with both the filing and service requirements is significant since it compounded the lack of notice to the parties. This has now been further exacerbated by the untimely request to amend the scope of the appeal and therefore the scope of the hearing to which no one has had a chance to respond. Allowing the hearing to proceed as scheduled, given the Appellants' procedural errors, frustrates the intent of the filing, timing, and service provisions in the Zoning Regulations.

### IV.

#### **Conclusion**

The Appellants failed to properly and timely file their prehearing statement in accordance with Section 3112 of the Zoning Regulations, and they neglected to serve the Intervenor and ANC 2E, which the Appellants knew or should have known were parties to the case. Appellants have now unilaterally filed a "supplemental prehearing statement" which functions as an untimely change in the scope of the appeal and of the hearing. It would be unfair and inappropriate to proceed on November 1, and for these reasons, Intervenor respectfully requests that the Board grant this motion to postpone the hearing on the appeal, and reschedule this hearing when the business of the Board permits.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: *Leila M. Jackson Batties*  
Leila M. Jackson Batties, Esq.  
Paul J. Kiernan, Esq.

2099 Pennsylvania Avenue, N.W  
Suite 100  
Washington, DC 20006

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November, 2011, a copy of the Intervenor's Motion to Postpone the Hearing for **BZA Appeal No 18257**, was sent to the following persons:

Ruthanne G. Miller, Esq.  
Sullivan, Styles & Barros, LLP  
1990 M Street, NW, Suite 200  
Washington, DC 22036  
Via Hand Delivery

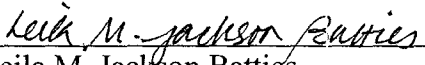
Melinda M. Bolling, Esq.  
General Counsel  
Department of Consumer and Regulatory Affairs  
1100 4<sup>th</sup> Street, SW  
5<sup>th</sup> Floor  
Washington, DC 20024  
Via Hand Delivery

Jay Surabian, Esquire  
Assistant Attorney General  
Office of the Attorney General  
941 North Capitol Street, NE, Suite 9400  
Washington, DC 20002  
Via Hand Delivery

Mr. Matthew LeGrant  
Zoning Administrator  
Department of Consumer and Regulatory Affairs  
1100 4<sup>th</sup> Street, SW -- Room 3100  
Washington, DC 20024  
Via Hand Delivery

Advisory Neighborhood Commission 2E  
c/o Commissioner Ron Lewis, Chair  
3265 S Street, NW  
Washington, DC 20007  
Via E-Mail [anc2e@dc.gov](mailto:anc2e@dc.gov); [ron.lewis@anc.dc.gov](mailto:ron.lewis@anc.dc.gov)

Commissioner Bill Starrels, SMD ANC 2E05  
3265 S Street, NW  
Washington, DC 20007  
Via E-Mail: [bill.starrels@anc.dc.gov](mailto:bill.starrels@anc.dc.gov)

  
Leila M. Jackson Batties

11/1/11

SPM/Kel

By

Intervenor (property owner)

COB 2

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