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May 23, 2013

District of Columbia Board of Zoning Adjustment
441 4th Street, NW
Suite 210-S
Washington, DC 20001

Re: Board of Zoning Adjustment Case No. 18263
Special Exception Application for Square 733, Lot 23 (the "Property");
Agent Authorization Letter

Honorable Members of the Board:

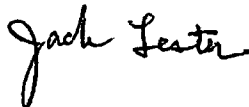
The owners of the above-referenced Property and Applicant in the above-referenced case, Stephanie and John Lester, hereby authorize the law firm of Goulston & Storrs to represent the Applicant in all proceedings before the Board of Zoning Adjustment.

Please feel free to contact me if you have any questions or comments.

Respectfully,



Stephanie Lester



John Lester

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18263
EXHIBIT NO. 56

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Board of Zoning Adjustment
District of Columbia
CASE NO. 18263
EXHIBIT NO. 56

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

Application of John and Stephanie Lester

BZA Application No. 18263
ANC 6B

**OPPOSITION TO MOTION FOR RESOLUTION ON
MERITS OF CHARLES AND SUSAN PARSONS DATED
MAY 17, 2013 (“MOTION”)**

On behalf of the Applicant in the above-referenced case, we hereby oppose the Motion. The Motion raises procedural questions that have already been considered and rejected by this Board in a continued effort to relitigate issues that were already addressed at a full and fair public hearing. The Board unanimously approved the application over 18 months ago based on well-settled precedent and established interpretations of the Zoning Regulations, and the Applicant is entitled to finally proceed with the long-overdue construction of the approved addition to their house.

I. The Untimely Request for Party Status Should be Denied – Again

The Applicant opposes Parsons’ request for party status, which is extraordinarily untimely and would be prejudicial to the Applicant. Parsons fundamentally misunderstands the long-recognized distinction between standing under the D.C. Administrative Procedure Act (“DC APA”) and status as a party under the D.C. Zoning Regulations. *See Parsons v. D.C. Board of Zoning Adjustment*, D.C. App. 11-AA-1606 (the “**Decision**”) at 8 (Schwelb, J., concurring).

- The DC APA permits any person “adversely affected or aggrieved” to seek judicial review of an agency order. D.C. Code § 2-510(a) (2001).
- The Zoning Regulations, by contrast, establish a higher bar for granting party status: an applicant for party status must file a timely application that provides the specific information set forth in Section 3106.2 of the Zoning Regulations.

Nothing in the Decision requires the Board to retroactively grant Parsons party status in the zoning case simply because he was permitted to challenge the matter under the DC APA.

Furthermore, the Board already considered and denied Parsons’ untimely request for party status approximately two months after the public hearing and in connection with Parsons’ motion for reconsideration. See BZA Application No. 18263A, attached as Exhibit A (“**Order on Reconsideration**”). In the Order on Reconsideration, the Board concluded that Parsons’ request for party status was “inexcusably late” and otherwise failed to “satisfy, or even address

the requirements” set forth in Section 3106.2 of the Zoning Regulations.¹ If Parsons’ request was “inexcusably late” in January 2012, then it is now utterly unacceptable. The Board cannot grant party status applications after the fact and allow petitioners to reopen cases. To do so would deny applicants the right to comfortably rely on the Board’s ruling once it is issued.

II. The Request for a Hearing Should be Denied – Again

The Applicant also opposes Parsons’ motion to convene a hearing on the Motion for Reconsideration. As with the request for party status, the Board already considered and dismissed this request when it dismissed Parsons’ motion for reconsideration over a year ago. Parsons did not challenge, and the D.C. Court of Appeals did not vacate, the Board’s Order on Reconsideration. More broadly, the Court did not direct the Board to reconsider the application, reopen the hearing, or otherwise collect additional evidence and testimony. The Court merely required the Board to explain the rationale for its decision with findings of fact and conclusions of law.

As a matter of policy, the Board should not permit “reconsideration” on motions for reconsideration that have already been dismissed. Once the Board has evaluated and addressed the request, the matter should be settled and the applicant has the right to rely on the finality of the Board’s decision.

III. No Further Action is Required to Vacate the Board’s Summary Order

In the Decision, the Court vacated the original summary order on the application and directed the Board to issue a full order with findings of fact and conclusions of law that would facilitate judicial review. The Board is not required to take any further action to vacate the order or otherwise reopen the proceedings. The record in this matter contains ample evidence to support findings of fact and conclusion of law that supports the Board’s original approval of the application, including the question of whether variance relief was required. No further hearing is required to underpin the Board’s decision.

IV. Conclusion

We respectfully request that the Board deny Parsons’ Motion and issue a new order containing findings of fact and conclusions of law so that the Applicant may proceed to construct an addition to the Applicant’s residence that was approved 18 months ago.

¹ Section 3106.2 clearly requires that applications for party status be filed not less than fourteen (14) days prior to the date set for the hearing and requires the requesting individual to provide specific information as to how his/her specific situation would be affected uniquely by the pending application.

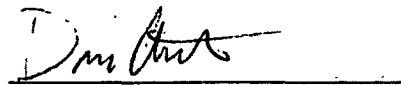
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered by hand or electronic mail on May 24, 2013 to the following:

Matthew Jesick
DC Office of Planning
1100 4th Street, SW, Suite E650
Washington, DC 20024

ANC 6B
921 Pennsylvania Avenue SE, Suite 305
Washington DC 20003

Charles C. Parsons
129 C Street SE
Washington DC 20003*

A handwritten signature in black ink, appearing to read "David Avitabile", is written over a horizontal line.

David Avitabile

*Although Mr. Parsons is not a party to the above-referenced matter, he is copied as a courtesy.

EXHIBIT "A"

GOVERNMENT OF THE DISTRICT OF COLUMBIA Board of Zoning Adjustment



Application No. 18263-A of Stephanie and John Lester, pursuant to 11 DCMR §§ 1202.1 and 3104.1, for a special exception under § 223 to allow a two-story rear addition to an existing one-family row dwelling, not meeting requirements for lot occupancy (§ 403), rear yard (§ 404), or open court width (§ 406) in the CAP/R-4 District at premises 117 C Street, S.E. (Square 733, Lot 23).

HEARING DATE: October 25, 2011
DECISION DATE: November 8, 2011
ORDER DATE: November 17, 2011
**RECONSIDERATION
DECISION DATE:** January 10, 2012

ORDER DISMISSING MOTION FOR RECONSIDERATION

The order of the Board of Zoning Adjustment ("Board") approving this application was issued on November 17, 2011. On November 23, 2011, a motion for reconsideration of the Board's decision, as reflected in that order, was submitted by Charles and Susan Parsons ("the Parsons"), neither of whom requested party status in this proceeding. Pursuant to § 3126.2 of the Board's Rules of Practice and Procedure (Title 11 DCMR, Chapter 31), only parties may seek reconsideration. Pursuant to 11 DCMR § 3100.5, the Board may, for good cause shown, waive many of its rules, including this one. However, the November 23rd motion included no waiver request. By submission received December 21, 2011, the Parsons requested such a waiver claiming "good cause because they: 1) are definitely within the area affected by the application, 2) opposed the application at the October 25, 2011 hearing, and 3) filed submissions concerning [an] issue on November 3, 2011, and 4) filed a timely motion for reconsideration." By letter submitted January 3, 2012, the Applicant requested denial of the Parsons' request for a waiver of the party requirement as well as denial of what the Applicant characterized as the Parsons' "request for party status ... and for reconsideration" of the Board's decision to grant the application.

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The Board concludes that the waiver should not be granted. The Parsons did not submit a timely request for party status, and to the extent that their motion for waiver was intended to seek party status, it must be denied as inexcusably late and for failure to satisfy, or even address, the requirements set forth in § 3106.2 of the Zoning Regulations. Nor does the Board find good cause to waive the party requirement for submission of a motion for reconsideration, finding that none of the factors proffered by the Parsons demonstrated good cause.

The fact that the Parsons live in proximity to the property and opposed the application only begs the question why they did not seek party status when they had an opportunity. That they were permitted to file a submission before the Board only demonstrates that the Board went out of its way to accommodate them, but that accommodation did not elevate their status to that of a party or vest them with equivalent rights. Finally, the fact that the motion was timely is not relevant at all. To hold otherwise would eviscerate the party status prerequisite for seeking reconsideration and replace it with only a requirement for timely filing.

There may be extraordinary circumstances where the Board permits a non-party to seek reconsideration, as when notice of a hearing is not given, *see Dietrich v. District of Columbia Bd. of Zoning Adjustment*, 293 A.2d 470, 471 n.2 (D.C. 1972), but such circumstances are not present here.

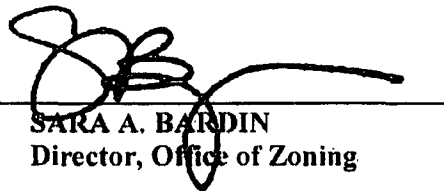
For the reasons stated above, it is **ORDERED** that the request for a waiver of the party requirement is **DENIED** and the motion for reconsideration is **DISMISSED**.

VOTE: 5-0-0 (Meridith H. Moldenhauer, Lloyd J. Jordan, Anthony J. Hood; Nicole C. Sorg, and Jeffrey L. Hinkle (by absentee ballot) voting to Deny.)¹

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: August 15, 2012

¹ Although the oral motion approved by the Board was only to “deny” the waiver request, this Order reflects the Board action to include the dismissal of the reconsideration motion since the denial of the waiver necessarily results in Board’s inability to reach the merits.

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PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.