

BEFORE THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Application of Daniel Merlis & Deany Laliotis – 3825 Morrison St., N.W.

Application No. 18296

POSITION OF PARTY OPPONENTS

KOLKER NEIGHBORS AND MILES-MCLEAN NEIGHBORS

WITHDRAWING OBJECTION CONDITIONED UPON PERFORMANCE

OF THE PLAN SHOWN IN BALMAN DRAWING AS AGREED BY APPLICANTS

Party opponents Stuart and Robin Miles-McLean and Peter and Ann Kolker advise the Board of Zoning Adjustment as follows:

Timing of this Filing

Although the Board requested post-hearing filings to be submitted to the BZA by February 1, 2012, the Applicant's submission was not made until February 2, 2012. Therefore, the Party Opponents could not file their submission responding to it until February 3, 2012. The delay in the Applicants' filing warrants the Party Opponents' submission at this date and we request that the Board accept the filing at this time for that reason.

Summary of Party Opponents' Current Position

The Party Opponents are willing to withdraw their opposition to the application, **provided that** the plan of the landscape architect Barbara Balman dated January 26, 2012 and revised 1/28/12 (the "Balman Drawing") is made a condition to approval of the Special Exception. A copy of that plan is attached hereto and also is attached to the Applicants' February 2, 2012 filing. Party Opponents' position is that this condition is an indispensable condition to approval of the Special Exception in order to ensure that the mitigating features shown in the Balman Drawing are constructed and continuously maintained on the Applicants' property.

Correction of Statements in Applicants' February 2, 2012 Filing

Although the Party Opponents are willing to withdraw their opposition on the basis stated above, we continue to assert that, in the absence of the condition that the plan of the Balman Drawing be implemented, the Applicants' request for Special Exception would not qualify for approval. The statement of February 2, 2012 contains several errors of fact which require correction and which support this contention. They include:

(a) The ANC report, which is entitled to "great weight" **opposed** the Special Exception **unless** the Balman Plan (referred to therein in an earlier version) was made a condition to the Exception. The February 2, 2012 submission suggests that the ANC approved

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the plan with a recommendation for landscaping. The precise wording of the report is different in this important respect.

(b) The pre-existing deck which the Applicants' refer to was certainly not at a height of four feet above grade. To the contrary, as the photographs submitted by the Applicants and Parties Opponents demonstrate, the wood deck was not more than four inches above grade. There was no evidence that this wooden deck was constructed before 1958, but regardless of when it was constructed, it could not serve as a basis for grandfathering the new deck as a non-conforming structure cannot be enlarged. The height, depth, volume and overall size of the garage structure bear no similarity to the wooden deck. Thus, the wooden deck is quite irrelevant to the applicants' request.

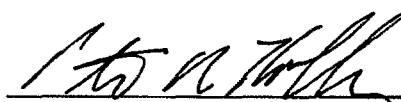
(c) The newly constructed structure is not "subterranean" as applicants' February 2, 2012 filing suggests. Reference to the photographs of it is sufficient proof of that.

Party Opponents' Current Position

Following the January 17, 2012 hearing of this matter, the Party opponents and neighbor Lee Foster-Crowder¹ met with the applicants and their representative, landscape architect Barbara Balman. As a result of those meetings, Ms. Balman prepared the Balman Drawing. The Party Opponents regard the implementation and preservation of the features in the Balman Drawings as essential buffers to mitigate the intrusions created by the applicants' construction. To ensure that these features provide for the long-term protection of the privacy of the neighbors' property and enable the applicants' property to better meet the character of the neighborhood, the Party Opponents request that, if the Special Exception sought by the applicants is granted, the Special Exception be conditioned upon the fulfillment of the plan described in the Balman Drawing. The Applicants, by their February 2, 2012 submission have agreed to the performance of the plan shown in the Balman Drawing. Thus, although the Party Opponents could continue to oppose the Special Exception for the reasons previously stated in their earlier submissions and based on the evidence presented at the January 17, 2012 hearing of this matter, the Party Opponents are willing to withdraw their opposition to the Special Exception, if the Special Exception is approved conditioned upon the applicants' fulfillment of the plan described in the Balman Drawing.

¹ Lee Foster-Crowder is not a party but supports the position of the party opponents and they are authorized by her to state that she supports the position outlined in this submission.

Dated: 2/3/12



Peter R. and Ann F. Kolker
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Date: 02/03/2012



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Robin and Stuart Miles-McLean
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February 3, 2012

RE: Application No. 18296

Dear BZA:

In addition to the Position of Party Opponents document we filed, we also wanted to provide for the Board a bit more background on why this matter is so important to us.

As the Board requested, we continued trying to work with the Applicant to find design changes that might mitigate the negative impacts of their illegal driveway and particularly their new garage, built within mere inches of our property line, which, as we testified before you on January 17th, impacts the privacy, enjoyment, and sightlines from our property because the deck on the roof of their new garage looms over and looks directly into our yard and home.

While we eventually came to agreement on a fence design, we would also like some permanent set back from the property line we share with the Applicant. Although the Applicant promises to keep planters in place, the next owner may not and unlike the Applicant, we are tied and committed to this property for as long as possible.

When we bought this house in 1995, we were charmed by the neighborhood and happy to be back in an urban environment after 3 years in Ann Arbor, MI. Little did we know that our choice would be so fortuitous for our then 6 year old, not-yet-disabled, son.

In 1999, when he was 10, our son Jake fell off the diving board and landed on the concrete pool deck at a local pool. After emergency surgery to remove a portion of his brain, Jake spent several weeks in a coma. As he slowly regained consciousness it became apparent that

he had no voluntary body movement at all - not even his eyes. If he survived, his prognosis was grim.

After 8 months of intensive in-hospital therapy and years of daily work, Jake has regained the ability to breathe on his own, to eat, to walk, and although he is often difficult to understand, he can talk again.

Despite his progress, Jake will never be able to live on his own, but given the unique characteristics of our neighborhood - some refer to it as a small town in a big city - he can have some semblance of independence. We are within walking distance of shops, theaters, restaurants, grocery stores and metro. Jake will never be able to drive, but he can navigate uncomplicated trips on Metro rail and bus if someone helps him with the route the first couple of times.

Recognizing that we cannot easily find such a perfect environment for him elsewhere, we undertook a renovation project two years ago, creating an "apartment" for him within the footprint of our home. (While Jake operates day to day at roughly the level of a 10 year old, he still thinks of himself as a 23 year old young man in need of his own space). We also kept in mind design features in the rest of the house which would maximize our ability to "age in place" so Jake can benefit from the features of our neighborhood for as long as possible.

Unlike the Applicant, we are tied to this house and this property for as long as we are physically able. There will be no retirement house, or vacation house, or a career move. By agreeing to let the Applicant keep the new garage and deck that looks over our yard and into our windows, we are agreeing to something we will live with for a long time. In light of this, we think asking for some fencing and some permanent physical element providing some set-back from the shared property line is not unreasonable. We hope that you will only grant the requested Special Exception with the requested mitigation as a condition.

Thank you for your generosity of time and attention to this matter.

Robin and Stuart Miles-McLean

A handwritten signature in black ink, appearing to be 'RM' or similar, written over a horizontal line.