

August 17, 2012

VIA EMAIL

D.C. Board of Zoning Adjustment
441 4th Street NW, Suite 210S
Washington, DC 20001

Re: **BZA Appeal No. 18460 ("Appeal") – Motion to Intervene; Motion to Expedite the Public Hearing**

Dear Members of the Board:

Missouri Avenue Development Partners, LLC ("Missouri") hereby moves the Board of Zoning Adjustment ("BZA" or "Board") to allow it to intervene in the above-referenced appeal concerning the issuance of Building Permit No. B1202925 ("Permit") for the construction of a new retail building at 5929 Georgia Avenue, NW ("Property") for a new Wal-Mart store. In addition, Missouri requests that the Board expedite the public hearing on this Appeal for the reasons stated below.

I. MOTION TO INTERVENE

Pursuant to Section 3112.15 of the Zoning Regulations (11 DCMR § 3112.15), Missouri requests that the Board permit Missouri to intervene in the Appeal. Missouri is the fee simple owner of the Property and the holder of the Permit (No. B1202925) which is the subject of the Appeal. As the real party-in-interest with regard to the Permit and as owner of the land, Missouri has a specific interest in, and will be directly and uniquely affected by, the outcome of the Appeal.

II. MOTION TO EXPEDITE THE PUBLIC HEARING

It is our understanding that, absent the granting of this request to expedite the public hearing, this Appeal is not likely to be heard until December 2012. Consequently, the entire project, for which a valid Permit was issued on June 13, 2012, will be held up for an additional 4-5 months. For the reasons set forth below, Missouri demonstrates the "good cause" necessary, pursuant to 11 DCMR §3112.9, to advance the hearing date to the first possible hearing date after issuance of the statutory notice requirement.

Background

Appellants and related groups have participated in a long and organized campaign to impede and stop this lawful, matter-of-right project from being constructed.¹

On March 21, 2011, Missouri filed an application for Large Tract Review (“LTR”)² of a project (“Project”) to develop the Property for use as a Wal-Mart retail store (“Project”). The application called for the demolition of all structures on the Property and construction of a new 100,000 square foot retail building with underground parking. In accordance with LTR regulations, the application was sent by the District of Columbia Office of Planning (“Office of Planning”) to a number of District agencies, Advisory Neighborhood Commissions (“ANC”) 4B and 4C. Notice of the application was sent to all property owners within 1,000 square feet of the Property for evaluation and comment. In the ensuing months, Missouri participated in a number of meetings with the agencies, ANC 4B, and in a variety of other public forums to receive input and comments on the Project. As a result, the proposal was modified to incorporate numerous requests and recommendations made during the public review process.

On August 10, 2011, the Office of Planning issued a Memorandum ending the public review process. The Memorandum recognized that the Project is consistent with the District of Columbia Comprehensive Plan. This decision cleared the path for construction of the Project. Missouri subsequently entered into contracts with Bohler Engineering, Gorove-Slade Associates, Inc., Foulger-Pratt Contracting and ICOR to proceed with the Project and to remove the structures on the site. On August 11, 2011, Missouri obtained a building permit authorizing the removal of the roof of the Car Barn, one of the structures on the Property. On or about August 15, 2011, Missouri’s agents began to dismantle the Car Barn’s roof for the purpose of preserving the trusses so that they could be restored and incorporated into the Project. On September 7 and 8, 2011, Missouri’s agents filed Raze Permit applications seeking authorization to demolish the Car Barn and the other structures on the Property.

On September 7, 2011, an organization, in which Mr. Baruti Jahi (one of the Appellants) was an officer, filed Articles of Incorporation with the DCRA to, among other things, to engage in activities related to the preservation of historic resources in the Brightwood neighborhood. On September 12, 2011, days after incorporation, it filed an application with the

¹ Mr. Baruti Jahi, one of the Appellants, has been a vocal opponent to Wal-Mart’s anticipated presence in the Brightwood neighborhood. In fact, Mr. Jahi’s website announcing his candidacy for Ward 4 City Council identifies him as opposing the placement of Wal-Mart in Ward 4. Official Site of Baruti Jahi, available at <http://www.jahiforward4.com/aboutbarutijahi.html> (last visited December 12, 2011). Further, Mr. Jahi has been actively involved in generating public opposition to Wal-Mart. See “Residents Vow to Stop Wal-Mart on Georgia Ave.,” Washington Examiner, August 15, 2011, available at <http://washingtone Examiner.com/local/dc/2011/08/residents-vow-stop-wal-mart-georgia-ave> (last visited December 12, 2011) (“We had over 1,000 petitions sent to the mayor, we’ve had rallies, passed out fliers and as result of all those things ... it looks like we’re well on our way to preventing Wal-Mart from building in that location.”). According to the Washington Examiner, Mr. Jahi expressed his willingness in August 2011 to resort to litigation to prevent Wal-Mart’s opening. Id.

² The LTR review process is required for, among other things, commercial projects outside of the Central Employment area, in excess of 50,000 gross square feet. See 10 DCMR 2300 *et seq.* The review process is intended to provide broad review of the proposed development to mitigate adverse impacts that may be caused by such development.

Historic Preservation Review Board ("HPRB") to have the Car Barn, one of the buildings on the Property, designated as a historic landmark.

On October 27, 2011, the HPRB held a public hearing to consider Plaintiff's application to designate the Property as a historic landmark. After hearing the evidence, the HPRB voted unanimously to deny the landmark application.

Five weeks after the HPRB voted unanimously to deny the historic landmark application, Mr. Jahi's organization filed a law suit seeking review of the HPRB decision. After a hearing, the Court dismissed the lawsuit.

After clearing all legal hurdles, Missouri applied for, and received the Permit to build this matter-of-right structure on June 13, 2013. Missouri has begun construction on the site. Appellants waited sixty days from June 13th, until the last day upon which an appeal could be filed, to take this action before the BZA. It is clear that Appellant's sole reason for its actions over the past twelve months has been to delay and derail this Project. With the possibility that this Appeal will not be heard until December, the Project will be put in jeopardy.

Rationale

Missouri had already spent hundreds of thousands of dollars on engineering, consulting and legal fees, environmental remediation and construction costs for the Project. Preliminary construction has begun on the site. Additional unwarranted delay of the Project would result in Missouri incurring additional costs of approximately \$63,000.00 per month in interest expense and \$6,300.00 per month in real estate taxes (or roughly \$650,000 annually).

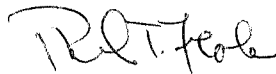
Moreover, the multi-year lease between Missouri and Wal-Mart imposes certain obligations on Missouri to obtain permits and to proceed with construction within a certain period of time. The delay imposed by this Appeal and the specter of protracted litigation, however baseless, could seriously impede Missouri's ability to meet its obligations to Wal-Mart and deliver the Project.

The District would likewise suffer substantial harm by the delay caused by this Appeal. The Project is expected to create approximately 300 jobs in the District, encourage further development of Georgia Avenue, N.W., and generate \$2 million per year in tax revenues. The unwarranted delay and/or potential loss of this vital tax revenue and economic stimulation is especially dire given the current economic climate and lack of any alternative development proposals for the Property.

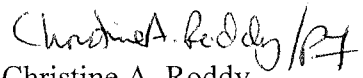
III. CONCLUSION

The Board should grant intervenor status to Missouri because it is the real party in interest in the subject Permit and will be directly and uniquely affected by the outcome of the Appeal. Also, the Board should grant the Motion to Expedite the Public Hearing of the Appeal because the construction of the Project is underway and resolution of this appeal at the earliest possible time is critical in order for Missouri to avoid irreparable damage.

Sincerely,



Phil T. Feola



Christine A. Roddy

cc: Adam Davis
Tom Kleine, Esq.

Certificate of Service

I hereby certify that the foregoing Motion was sent by first class, postage prepaid, to the following:

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