

LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON
DAVID S. LYNCH
MICHAEL I. KROOPNICK

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com

TELEPHONE: (410) 296-8166
FACSIMILE: (410) 825-0670

September 10, 2012

SUBMITTED ELECTRONICALLY

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

**Re: BZA Appeal No. 18469 (“Appeal”) -- Motion to Intervene; Opposition to
Walmart’s Motion to Expedite the Public Hearing**

Dear Members of the Board:

Appellants in the above-entitled matter oppose Walmart’s Motion to Intervene and Motion to Expedite the Public Hearing.

Appellants oppose Walmart’s Motion to Intervene given that the property owner of the site in dispute, Missouri Avenue Development Partners, LLC (“Missouri”), has already filed a Motion to Intervene, which Appellants did not oppose. Missouri is the appropriate intervenor in this case because, as the property owner, it represents the interests of not only itself, but all of its potential tenants. Granting Walmart’s Motion to Intervene is unnecessary since its interests are already represented by Missouri.

Appellants also oppose Walmart’s Motion to Expedite the Public Hearing. Appellants adopt the same reasons for opposing Walmart’s Motion as it did in opposing Missouri’s Motion, and incorporate by reference their letter dated August 24, 2012.

Appellants further oppose Walmart’s Motion for the following reasons. First, the BZA does have jurisdiction in this matter because the issuance of a building permit in this case was contingent on Missouri’s application for large tract review being sufficient. Insofar as Walmart disputes this argument, the proper forum for this dispute is when the BZA considers the merits of Appellants’ appeal. Similarly, because Appellants’ challenge to the issuance of the building permit is informed by the inadequacy of the large tract review process, Walmart’s reliance on *French v. District of Columbia Board of Zoning Adjustment*, 658 A.2d 1023 (D.C. 1995) and *Tenley and Cleveland Park Emergency Committee v. District of Columbia Board of Zoning Adjustment*, 550 A.2d

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331 (D.C. App. 1998) is inapposite to this appeal. Those cases did not concern large tract review, and are limited to the proposition that the Zoning Commission ensures consistency between any zoning regulations and the Comprehensive Plan. Appellants are not challenging any zoning regulations in this appeal. Finally, the Appellants are entitled to supplement their appeal with additional evidence and briefings up until 14 days prior to the scheduled hearing on the appeal. Therefore, pursuant to this timeframe, the Appellants may submit additional reasons for their appeal that fall within the jurisdiction of the BZA.

For the reasons stated above, Appellants respectfully request that the BZA deny Walmart's Motion to Intervene and Motion to Expedite the Public Hearing.

Respectfully submitted,



Michael Kroopnick

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Certificate of Service

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

Donal A. Rea
Cynthia A. Giordano
Saul Ewing
1919 Pennsylvania Avenue, N.W., Suite 550
Washington, D.C. 20006-3434

Phil T. Feola, Esq.
Christian A. Roddy, Esq.
Goulston & Storrs
1999 K Street, NW
Suite 500
Washington, DC 20006-1101

ANC 4B
6856 Eastern Avenue, NW
#316
Washington, DC 20012

Matthew LeGrant
Department of Consumer & Regulatory Affairs
Zoning Administrator
Government of the District of Columbia
1100 4th Street, SW, Room 3100
Washington, DC 20024

Jay Surabian, Esq.
Assistant Attorney General
Department of Consumer & Regulatory Affairs
1100 4th Street, SW
Washington, DC 20024

Jennifer Steingasser
1100 4th Street, SW
Suite E650
Washington, DC 20024


Michael Kroopnick