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By E-mail and IZIS

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

Re: Appeal No. 18469 of Susan Lynch (the "Appellant"); Response to Holland & Knight's Request for an Expedited Hearing

Dear Members of the Board,

This letter is the Appellant's response to the property owners' request for an expedited hearing date in the above-referenced appeal (the "Appeal"). The Appellant opposes expediting the hearing date primarily because the property owners have failed to cite any legitimate circumstance sufficient to warrant such an extraordinary action.

The property owners' builder, Sandy Spring Builders ("SSB") commenced construction of the subject elevated platform structure ("EPS") in the two subject rear yards with full knowledge that the structure may be in violation of the Zoning Regulations. Upon receiving a building permit for construction of what the Zoning Administrator first called a "retaining wall," SSB commenced construction of the EPS. Shortly thereafter, DCRA revoked that building permit and halted construction on the EPS, notifying SSB in the Notice of Revocation that:

> "the Zoning Administrator has determined that the retaining wall identified on the plans as Wall 2 is not a mere retaining wall. Wall 2 is proposed to be engineered with geogrid sheets and back filled with compacted fill dirt to create an elevated and flat backyard. Accordingly, is (sic) not a retaining wall, but is instead a wall that supports an artificially elevated platform structure that is proposed to be built in the rear yard of the Property."

Then, on June 29, 2012, DCRA issued a revised permit based on a revised permit application. In this revised permit, the Zoning Administrator re-characterized the structure as a "retaining wall" (without explanation) even though there appears to be no change to the critical elements which define this structure as an elevated platform structure (the geo-grid and the compacted dirt supporting an elevated and flat backyard). As counsel for the Appellant, I learned of the Zoning Administrator's decision to "re-characterize" the EPS to a retaining wall in a July 6th meeting with Zoning Division staff member Mr. Rohan Reid. Prior to this meeting, our expediter Rochelle Joseph was not permitted any access to these building permit plans or permit application, despite Holland & Knight's mistaken characterization of Appellant's "regular communication" with the Zoning Administrator. The re-characterization of this structure as a retaining wall is the central element of Zoning Administrator error in this Appeal.

Holland & Knight claims in its August 31st letter that since the houses will be ready for occupancy within the next sixty (60) days that it is critical that the case be decided before. Aside from the fact that this

claim could apply to almost any BZA appeal, there is nothing stopping the property owners from completing construction and occupying the homes. The EPS is by no means a necessary component of these homes being ready for occupancy. Therefore, the property owners have not shown good cause which would justify expediting the hearing date and gaining preference over other BZA appellants and applicants.

Furthermore, regardless of this unsupported claim of potential harm, SSB – with the benefit of able counsel - understood the risk of going forward with the construction of an elevated platform structure in contravention of the Board's decision in Appeal No. 17285 (which was affirmed by the D.C. Court of Appeals and re-stated clearly in DCRA's Notice to Revoke).

The Appeal was Timely Filed

Regarding the argument that this Appeal was not timely filed, the Appellant does not believe that Holland & Knight's letter is a formal motion to dismiss, so we only briefly address the assertion here. The Appellant did not have notice of the Zoning Administrator's decision to re-characterize the EPS as a retaining wall until July 6, 2012, about fifty-four (54) days before filing this appeal, so the appeal was filed on a timely basis in accordance with 11 DCMR §3112.2(a).[1] Regarding the "under roof" claim, the EPS which is at the heart of this appeal was *still under construction on the date this Appeal was filed*, and cannot possibly be considered to be "under roof." This would be akin to claiming that construction of an accessory garage can not be challenged for a cumulative lot occupancy violation if the completely separate house on the property is already under roof. The Appellant will be happy to fully address the timeliness question in due course, should any party make an actual motion.

For the reasons stated herein, the Appellant respectfully requests that the Board not give any preferential treatment to the property owners by expediting the regularly-scheduled hearing date. The Appellant requests that the Appeal hearing be scheduled in due course as it would for any other ordinary appeal.[2]

Sincerely,

Martin P. Sullivan

cc: Carolyn Brown, counsel for the property owners
Matthew Le Grant, Zoning Administrator
Jay Surabian, counsel for the Zoning Administrator
ANC 3D

[1] The appeal was even filed within sixty (60) days of the actual permit issuance date of June 29, 2012. The Appellant has no idea what rationale Holland & Knight may have for asserting that the Appellant had notice of the June 29th decision some time prior to June 29. We assume it has been thrown in to try to make the Board think it might swiftly address this Appeal, and therefore expedite.

[2] In contrast to Holland & Knight's conclusion, the Appellant would indeed be prejudiced by a decision to expedite the hearing date, as she needs the expected time to engage potential expert witnesses and otherwise prepare a case.