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March 14, 2013

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

Re: BZA Order No. 18477 of Abdo 14th St LLC – Applicant’s Opposition to Gelman Management Company’s Motions for Rehearing, Reconsideration and to Stay the Order

Dear Chairman Jordan and Members of the Board:

Abdo 14th St LLC (“Abdo” or “Applicant”) hereby opposes the Motions for Rehearing and Reconsideration (collectively “Motions”) and Motion to Stay (“Stay”) submitted by the Gelman Management Companies (“Gelman”) on March 4, 2013 concerning Board of Zoning Adjustment (“BZA” or “Board”) Order No. 18477 issued January 30, 2013 (“Order”). The Order authorizes zoning relief for the construction of a new mixed-use building (“Project”) at 1400-1404 14th Street, N.W. (Square 210, Lots 82, 102, and 800) (“Property”).

The Board should deny Gelman’s Motions because the Motions are based on the flawed premise that Gelman did not receive notice of Abdo’s request for zoning relief from the Board. Gelman unquestionably received proper notice. The Board may also deny Gelman’s Motions as untimely because the Motions were filed outside of the ten day period dictated by the District of Columbia Zoning Regulations (“Zoning Regulations”) at Section 3126.2. In addition, the Board should deny Gelman’s Motions because the Board cannot hear the Motions under its own rules, which prevent the Board from rehearing an application unless new evidence is available that could not have been presented at the original hearing. Gelman proffers no new evidence. Finally, the Board should deny Gelman’s request for a Stay because Gelman has failed to establish the requisite criteria for success and because there is no need for the Stay if the Motions are denied.

Sincerely,

Allison Prince, ck

Allison C. Prince

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18477

EXHIBIT NO. 43

ACP:dal

I. INTRODUCTION

The Board should deny all of Gelman's Motions and decline to reopen Abdo's application. Gelman is procedurally powerless to contest this case, and the Board should not accede to Gelman's numerous and baseless requests for waivers and relief. Gelman has no right to file its late Motions because it was not a party to the underlying case. Gelman's lone excuse for its tardiness is that its alleged failure to receive notice prevented it from presenting important information to the Board. Gelman asks the BZA for multiple waivers regarding timing and party status because, in Gelman's view, if it had only received proper notice initially, it would have applied for party status and raised objections to Abdo's plans that were not known to the Board when the Board considered Abdo's application.

Gelman's reasoning is flawed in many ways, any of which are grounds for denying the Motions. First, Gelman did receive proper notice of Abdo's application to the Board. Second, Gelman's far too late attempt to comment fails to contribute to the public dialogue in this case; nothing about what Gelman raises is new or was unknown when the BZA heard the case. Third, Gelman's requests that the Board waive numerous procedural and timing requirements to accommodate its late Motions are unsupportable because Gelman, an experienced local real estate firm, was not disadvantaged in any way in Abdo's application to the BZA. The Board should not allow a late-arriving and non-contributing effort to derail the approved Project.

II. OPPOSITION TO GELMAN'S MOTIONS FOR WAIVERS AND REHEARING

The Board should deny Gelman's Motions because (A) Gelman had proper notice of Abdo's request and simply failed to raise its concerns; (B) the Motions are untimely; and (C) the Motions do not comport with the BZA's rules regarding requests for reconsideration.

A. The Board Should Deny Gelman's Motions because Gelman Had Proper Notice of Abdo's Application for Zoning Relief.

Gelman excuses the Motions' lateness and other procedural defects by adopting the untenable position that it lacked notice of the Abdo's request for zoning relief from the BZA. Motions at 2. This position is simply wrong: Gelman had ample notice of Abdo's application to the BZA and of Abdo's plans for the Property. Abdo's faithful adherence to the BZA's numerous notice requirements establishes that, under the BZA's regulations, Gelman had proper notice of Abdo's application and hearing before the BZA. In addition, Abdo provided notice of its plans via thorough and very public engagements with the District of Columbia Historic Preservation Review Board ("HPRB") and the Advisory Neighborhood Commission ("ANC") in which the Property is located (and in which Gelman's affected property is located). Abdo's request to the BZA and plans for the Property were also the subject of numerous feature articles in the District of Columbia's popular real estate press. Finally, as Gelman itself acknowledges, it is a "sophisticated" and "experienced," locally-operated, real estate business. Given that the Property is a high-profile site at the heart of one of the District's most significant growth corridors, Abdo's plans for the Property could not possibly have been unknown to Gelman.

Gelman had more than adequate notice of Abdo's plans and should have voiced concerns when Abdo was before the BZA rather than several months after the BZA issued its Order. Gelman raises its concerns too late. The Board should find that Gelman had notice of Abdo's application, deny Gelman's requests for waivers, and deny the overall Motion for Rehearing.

1. Gelman Had Notice of the Applicant's Plans via the BZA's Notice Provisions.

The Zoning Regulations provide that notice of any application to the BZA must be given (a) to the general public, (b) to the ANC of the area where the property that is the subject of the application is located, and (c) to neighbors within 200 feet of the property that is the subject of

the application. The Zoning Regulations allocate the responsibility for providing this required notice to both the applicant and Director of the Office of Zoning (“**Director**”). Abdo complied with each of the Zoning Regulations’ notice obligations and there is no reason to believe that the Director failed to comply with any of its notice obligations. Compliance with the Zoning Regulations’ notice provisions is conclusive proof of the adequacy of notice,¹ and the Board has routinely found that the redundancy of the notice requirements suffices to provide adequate notice when one notice provision is not closely followed. Actual notice is not required.² These reasons alone support the Board denying Gelman’s entire Motion as untimely.

Under the BZA’s regulations governing notice, Abdo was required to:

- (i) Complete a Board-provided application form, 11 DCMR § 3113.5, which Abdo did on September 14, 2012, see Exhibit A;
- (ii) Provide the Board with the names and addresses of all property owners within 200 feet of the subject property, id. § 3113.5(a), which Abdo also did on September 14, 2012, see Exhibit B;
- (iii) Provide notice of its application before the BZA to each tenant of the subject property, id. § 3113.5(b), which Abdo did prior to the hearing;
- (iv) Give “additional notice” of the public hearing before the BZA by posting, in plain view of the public, each street frontage of the subject property with notice of the hearing fifteen days in advance of the hearing, id. §§ 3113.14, 3113.15, maintain that additional notice by checking the posted signs once every five days (and posting new signs as necessary), id. § 3113.18, and file an affidavit with attached photographs demonstrating compliance with the Zoning Regulations, id. §§ 3113.19, 3113.20, all which Abdo did, see Exhibit C.

¹ Russell v. Bd. of Zoning Adjustment, 402 A.2d 1231 (D.C. 1979) (holding that compliance with the Zoning Regulations’ notice requirement constitutes reasonable notice). The D.C. Court of Appeals recently upheld the Zoning Regulations’ notice provisions for BZA hearings as far surpassing Constitutional notice requirements, in part because of the below-cited notice provisions include redundancies. See Quincy Park Condo. Ass’n v. Bd. of Zoning Adjustment, 4 A.3d 1283, 1289 (D.C. 2010) (holding (i) that due process requires only that notice be reasonably calculated to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections and (ii) that constructive notice by means such as posting or publication in a newspaper may be valid where the identity or location of interested parties is unknown and difficult to determine) (citations and footnotes omitted); Tenley & Cleveland Park v. Emergency Comm. v. Bd. of Zoning Adjustment, 550 A.2d 331 (D.C. 1988) (finding challengers of a BZA decision had received adequate notice despite the BZA’s failure to follow all of its notice provisions completely).

² Quincy Park Condo Ass’n., at 1290 (holding that the touchstone of notice is “reasonableness”: neither “actual notice” nor “heroic” efforts to provide notice are required).

Although the applicant is not obligated to oversee the Director's fulfillment of the Office of Zoning's notice obligations, in this case, Abdo has no reason to doubt the Director fulfilled its duties, which include:

- (v) Publishing notice of the hearing in the *D.C. Register*, id. §§ 3113.13(a), which occurred on October 26, 2012, see 59 D.C. Reg. 12358 (Oct. 26, 2012);
- (vi) Mailing notice to the applicant and to the owners of all property within 200 feet of the property that is the subject of the application, 11 DCMR §§ 3113.13(b), which the Director did, see Order at 1;
- (vii) Mailing notice to the ANC for the area in which the subject property is located, 11 DCMR §§ 3113.13(d), which the Director did, see Order at 1; and
- (viii) Posting in the Office of Zoning the calendar of cases to be heard by the Board, id. §§ 3113.13(e), available at app.dcoz.dc.gov/content/schedule/publicview.aspx.

Gelman had notice of Abdo's application and hearing before the BZA through any one or more of the various methods enumerated above.³

Yet Gelman strenuously asserts that it did not have notice because (a) it allegedly did not receive the mailed notice from the Director informing it of Abdo's application and hearing before the Board⁴ and (b) it "did not have cause to visit" the Property while the BZA-required notice signs were present.⁵ Both of these excuses are entirely unavailing, and merely raising such far-fetched excuses only exposes Gelman's negligence.

Although it is unlikely that Gelman failed to receive the Director's mailing,⁶ such failure alone does not establish that Gelman lacked notice. The Board should not reopen Abdo's case

³ The BZA notice provisions clearly operated effectively in this case. Multiple interested parties received notice of Abdo's project and provided helpful comments to the Board when it considered Abdo's application for zoning relief. Order at 2.

⁴ Gelman acknowledges that its correct name and address appears on the list of property owners that Abdo properly submitted to the Director. See Motions at 4.

⁵ Gelman acknowledges that the BZA-required signs were posted on the Property. Motions at 3.

⁶ The Board should presume that notice was properly mailed. The Office of Zoning might make a mistake on rare occasion and fail to mail notices to all of properties neighboring the subject of an application for zoning relief. However, the Office of Zoning is well-equipped to routinely and successfully mail such notices to dozens of District property owners, and few projects result in complaints of omitted property owners. Indeed, Gelman's putative failure to receive the first notice from the Office of Zoning regarding the hearing is somewhat belied by Gelman's

merely because Gelman's office clerk cannot recall receiving a notice in the mail. Yet Gelman's entire case hangs on such a thin thread. Fortunately, the Zoning Regulations contemplate such oversights (whether a neighboring property owner's or the Director's) by imposing redundancies that require notice also be given by publication, by posting, and to the relevant ANC for its dissemination. Previously when the Board has had a neighboring property owner complain of failure to receive mailed notice, the Board has upheld the alternate forms of notice as sufficient.⁷ See, e.g., Application No. 16412 of Florida Avenue Partnership, 47 D.C. Reg. 2304 ¶ 1 (Mar. 31, 2000) (finding proper notice of a BZA hearing was given even though one property owner within the 200-foot radius of the subject property indicated he had not received notice of the hearing and that his name was not on the list of addresses to be notified) and Application No. 15825 of David Dale 1 (Sept. 8, 1994) (finding proper notice was given because the subject property had been properly posted, the hearing had been published in the D.C. Register, and the ANC had received notice and held a hearing on the subject application even though multiple nearby property owners had not received the mailed notice).

Gelman's failure to observe the notice signs posted on the Property is also insufficient to establish that it did not receive proper notice. Moreover, it is highly implausible that Gelman's property manager did not have occasion to observe the posted signs: the property manager lives

acknowledgment of its successful receipt of a mailing *after* the hearing. Clearly there was not a systemic problem with the Office of Zoning dispatching notices to Gelman.

What seems more likely is that the Office of Zoning's process worked, and Gelman either failed to pay attention to or deliberately ignored the first notice it received in the mail. The Motion strains credulity by offering an affidavit as proof that it never received the first mailed notice. Gelman's mail clerk doubtlessly receives dozens of pieces of mail each day. Unless Gelman maintains a log of the mail it receives (and the affidavit discloses no such log), its affiant could not reasonably be expected to recall and affirmatively attest to having received *any* one specific piece of mail several months ago. The Board should afford no weight to the Kenny affidavit.

⁷ Gelman dubiously characterizes its alleged failure to receive mailed notice as a "case of first impression." Motions at 3. Even a cursory search of the Board's archive of Orders, conveniently available online, would reveal to Gelman that it is hardly the first property owner to complain of having failed to receive a mailed notice.

in another Gelman-owned building on 14th Street, N.W. and walks past the Property on a near-daily basis. Gelman tacitly admits that if its property manager had observed the BZA hearing signs that the Applicant posted on its property—mere feet from Gelman’s front door—it would have received proper notice of the hearing. Motions at 3. The posting of the sign creates adequate notice of the pending hearing. See Quincy Park Condo. Ass’n v. Bd. of Zoning Adjustment, 4 A.3d 1283, 1286 n. 3 (D.C. 2010). Special consideration should not be available to Gelman simply because Gelman’s property manager irresponsibly turned a blind eye on signs prominently posted on the property next door.⁸

Thus, even assuming the Director erred and failed to send Gelman notice of the hearing (and there is no legitimate reason to believe that is the case), Gelman still received proper notice via (a) posted notice on the Property that Gelman’s employee passed on his near-daily commute to Gelman’s property, (b) publication in the *D.C. Register*, and (c) notice sent to the ANC. Gelman also received notice in the following forms that are not mandated by BZA regulations.

2. *Gelman Had Notice of Abdo’s Plans via HPRB and ANC Proceedings.*

Abdo’s application to the BZA was only the latest in a long line of public proceedings involving its plans for the Property. Any one of those prior proceedings gave Gelman at least informal notice—and more likely actual notice—that Abdo was planning a redevelopment project next door and would seek BZA zoning relief. Gelman’s assertion that it had “no knowledge” of Abdo’s plans prior to February 21, 2013 is not believable.

⁸ The Motions’ second affiant attests that he “was not in a position to view” the BZA hearing signs posted on the Property. Motions at Exhibit B. If Gelman’s property manager fails to recognize large, bright orange signs posted prominently in the public view of a building next door, that can hardly be the fault of Abdo or the BZA’s designated notice process. Posting an announcement of a BZA hearing on the property is neither new nor complicated and should not be foreign to Gelman, given its status as a “sophisticated and experienced” real estate firm with a widespread and longstanding presence in the District of Columbia.

Beginning in April, 2012, Abdo contacted the leadership of ANC 2F to present its plans for redeveloping the Property and to ask for the ANC's support in Abdo's presentations before the HPRB and ultimately the BZA.⁹ Abdo met four times with the ANC or ANC committees to discuss the Project, including one meeting specifically to discuss the zoning relief Abdo would request from the BZA. All consultations between Abdo and the ANC were public and were recorded in minutes posted to the ANC's website. Moreover, the ANC maintains a mailing list of its meetings that would have announced Abdo's plans. Gelman does not disclose whether it participates in the ANC's mailing list, but certainly it is eligible to do so.

In June, 2012, Abdo presented its plans for the Property to the HPRB as a precursor to seeking zoning relief from the BZA. As with the ANC, Abdo conducted its meeting with the HPRB in a public forum. Ahead of the meeting between Abdo and the HPRB, the HPRB published an agenda that provided notice of Abdo's Project. After the meeting, the HPRB staff published a report on Abdo's proposal. The notice and the report are readily available to the general public. A sophisticated and experienced real estate firm such as Gelman should have no trouble keeping abreast of development plans occurring on adjacent properties.

Abdo's numerous ANC and HPRB meetings involving the Property put Gelman on notice that a neighboring site was under plans for significant redevelopment.

3. *Gelman Had Notice of Abdo's Plans and Application to the BZA via Publication in the Popular Press.*

As described above, the BZA regulations governing pre-hearing notice require the Director to publish an announcement of all hearings in the *D.C. Register*. Publication of Abdo's hearing in the *D.C. Register* alone establishes notice and defeats Gelman's Motions.

⁹ Gelman's property is located in the same ANC as the Abdo Property.

Nevertheless, Gelman had additional publication notice of Abdo's proceeding before the BZA by virtue of widespread coverage in the local business press of Abdo's Project. Multiple District of Columbia-area real estate and general business news outlets covered each stage of Abdo's plans for the redevelopment of the Property, including Abdo's plans to seek zoning relief from the BZA.¹⁰ Gelman must follow local press relevant to the real estate industry and would certainly have noticed articles pertaining to the development of a competitor project next door.

4. *Gelman's Experience and the Location of the Property Should Have Alerted Gelman to Abdo's Planned Development at the Property.*

Gelman does not disguise its status as a "sophisticated" and "experienced" real estate firm with headquarters in the District of Columbia no more than one mile from the Property. Motions at 5. Gelman is not a "mom and pop" operation, it is not an out-of-town or absentee property owner, and it is not a private individual with other obligations and concerns that might cause it to be slow to understand or keep up with development happenings in its neighborhood. Were any of those parties complaining of inadequate notice or insufficient time to respond, Abdo might be more understanding. But the Board should not be sympathetic to Gelman. Gelman is a long-established owner of "many" for-profit real estate properties throughout the District; it maintains a full-time professional staff; and it is represented by counsel who has more than a decade of experience in District of Columbia land use matters and is presumably facile with the task of reviewing the BZA's docket. Of the Property's many potentially interested neighbors, Gelman is among the best equipped to keep track of developments in its neighborhood. Gelman

¹⁰ See, e.g., *Abdo Returns to Logan with 30-Unit Project*, URB. TURF (May 2, 2012), dc.urbanturf.com/articles/blog/abdo_returns_to_logan_with_mixed_use_project/5487; *New 30-Unit Abdo Project on 14th Street Will Be Rentals*, URB. TURF (Nov. 9, 2012), dc.urbanturf.com/articles/blog/new_30-unit_abdo_project_at_14th_and_rhode_island_will_be_rentals/6286; Amanda Abrams, *Abdo Envisions Condos for Empty Rhode Island Avenue Lot*, DC MUD BY DC REAL ESTATE (Oct. 31, 2012), dcmud.blogspot.com/2012/10/abdo-envisions-condos-for-empty-rhode.html (discussing multiple Abdo-led projects along the 14th Street, N.W. corridor); *Abdo 14th & Rhode Island*, URB. TURF (Nov. 9, 2012), dc.urbanturf.com/pipeline/225/Abdo_14th_Rhode_Island/.

and its counsel either were simply “asleep at the switch” when notice of Abdo’s Project was released or deliberately withheld their concerns in order to stall the Project.

Note that Gelman, in its Motions, never denies it knew about Abdo’s plans to redevelop the Property. Rather Gelman articulates its position as being the victim of procedural deficiencies that prevented it from testifying at the BZA hearing. Gelman is carefully non-committal about what it actually knew of Abdo’s plans in order to preserve its claim that it lacked notice.

The Board should not overlook the market reality that Abdo’s planned Project represents direct competition (with new construction and a more prominent location) to Gelman’s existing, older apartment building. Gelman certainly has market motives to slow Abdo’s Project. If Gelman knew that Abdo was planning to redevelop the site (as it almost certainly must have), it should have been actively watching for an opportunity to comment on Abdo’s proposed plans. The willful ignorance of an unhappy neighbor does not nullify the BZA’s notice regulations.

Reopening the Order to accommodate Gelman’s negligence sets a bad precedent. Such an outcome would require the BZA to reopen matters to accommodate non-parties who had ignored the clear deadlines imposed by the Zoning Regulations. If the BZA were to excuse Gelman’s ignorance of Abdo’s application, then the BZA might as well repeal the posting requirements and discontinue mailings because any party opposing a project could simply ignore postings and disregard mailings to remain ignorant of proceedings. The Board should not reward careless property owners, especially those with the means to follow the Board’s rules. Under the Zoning Regulations, Gelman unquestionably had notice of Abdo’s application. The BZA should ignore Gelman’s assertions of inadequate notice and deny its untimely Motions.

B. The Board Should Deny Gelman's Motion as Untimely.

Gelman's Motion is untimely in two ways, either of which constitutes grounds for denial. First, Gelman filed its Motion after the period for filing a motion for rehearing or reconsideration stipulated in the Zoning Regulations. Second, Gelman failed to raise its concerns when it could be granted party status to Abdo's application to the BZA. As a non-party to this proceeding, Gelman has no basis for seeking either rehearing or reconsideration.

1. Gelman's Motion Was Filed Late and Without Good Reason.

Gelman acknowledges that its Motions were filed outside of the ten-day period for filing such motions contemplated in the Zoning Regulations. See Motions at 4; 11 DCMR § 3126.2. However, Gelman offers no justification for its tardiness. Gelman's tactics appear to be driven by an all-out desire to stall Abdo's redevelopment efforts rather than by any interest in respecting the BZA's procedures. The Board can easily dispense with this matter and discourage similar subversive efforts in the future by denying the Motions on timeliness grounds.¹¹

There is no good reason to be sympathetic to Gelman. With even a modest amount of diligence, Gelman could have filed its Motions in time. Gelman is deep-pocketed, for-profit, and represented by counsel. It is not a community group or a *pro se* neighbor trying to make its concerns heard. Gelman should have to learn and follow the rules.

2. Gelman Should Have Raised Its Concerns Before the BZA after Seeking Party Status.

The Zoning Regulations allow "any party" to file a motion for reconsideration or rehearing, 11 DCMR § 3126.2, but by its own admission Gelman is not a "party" under the

¹¹ The D.C. Court of Appeals routinely upholds, on timeliness grounds, denials of requests to the BZA or its sister body, the Zoning Commission. See Tiber Island Cooperative Homes v. Zoning Comm'n, 975 A.2d 186, 191 (D.C. 2009) ("A literal reading of timing claims can result in seemingly harsh results, but that a result is harsh does not mean it is legally wrong. . . . Petitioners have only themselves to blame for filing their request out of time"). See also Application No. 16531 of Father Flanagan's Boys Town of Washington 2 (Feb. 26, 2001) (denying the rehearing and reconsideration request of a party that failed to request party status prior to or at the hearing).

Zoning Regulations. Gelman, therefore, has no right to even file the Motions for Rehearing and Reconsideration, and the Motions should be denied on that ground alone.

Lack of proper notice is the only justification that Gelman offers for failing to seek party status and raise its concerns as it should have when Abdo's application was before the BZA. For the reasons set forth in detail above, however, Gelman clearly had notice of Abdo's application, whether it received the Director's mailing or not and whether it saw the posted sign for the hearing or not. At this point, however, Abdo's plans have met with broad support and excitement from the ANC, the HPRB, numerous neighbors, and the BZA, and it is too late to change the Project's plans. Gelman is simply too late to participate in this matter, and the Board should deny the Motions.

C. Gelman's Motion for Rehearing Is Improper and Should be Denied.

The Board should deny Gelman's Motion for Rehearing because it sets forth a highly flawed standard for rehearing and fails to offer any new evidence in direct contravention of the Board's rules.

1. Gelman's Standard for Granting a Motion for Rehearing Is Flawed.

Gelman recites that in considering its Motion for Rehearing, the Board should "balance the interests of the Applicant with the potential detriment to the party that was unaware of the BZA application." Motions at 5. This standard is perfectly wrong. A plain reading of the regulations contradicts Gelman's standard because only *parties* may file motions for rehearing. 11 DCMR § 3126.2. The regulations exclude non-parties from the right to file a motion for rehearing, whether or not that non-party faces any detriment or is "aware" of the BZA application. The Board should not apply Gelman's erroneous standard in reviewing the Motion.

2. The Appropriate Standard of Review is to Consider Whether New Evidence Is Available that Could Not Reasonably Have Been Presented at the Original Hearing.

An alternative to Gelman's confused and incorrect standard is easily discerned from the plain text of the Zoning Regulations, which sets forth acceptable grounds for the Board to grant a motion for rehearing. The Board may allow a rehearing only if "new evidence is submitted that could not reasonably have been presented at the original hearing." Id. § 3126.6.¹²

Gelman easily could have presented its concerns at the original hearing, which is perhaps why it recites its fabricated standard for rehearing. Gelman complains of the effects of the granted relief but raises no new factual information that was not presented to the Board in its review of Abdo's application. The Board reviewed Abdo's site plans and elevations and was quite able to discern the height and setback factors Gelman points to as adverse impacts on its property. Although Gelman's concerns were not the focus of the Board during its original hearing, those simple site plan factors do not represent the sort of new evidence that could not reasonably have been presented at the original hearing. Indeed, everything Gelman raises has already been before the Board. Nothing in Gelman's motion is new evidence, and therefore the Motion for Rehearing must be denied as inconsistent with the Zoning Regulations.

III. OPPOSITION TO MOTION FOR RECONSIDERATION

Even if the Board decides that Gelman is deserved of belatedly receiving party status, the Board should deny the Motion for Reconsideration. The Board made the correct decision in the first instance, and nothing offered by Gelman undermines the Board's reasoning.

IV. OPPOSITION TO MOTION FOR STAY

The Board need not consider Gelman's request for the Stay if, for any of the reasons above, the Board denies the Motions. The Stay is unnecessary if the Motions are denied. Abdo

¹² The D.C. Court of Appeals has affirmed the BZA's narrow authority to rehear a case. See Quincy, supra note 1, at 1288 (affirming the BZA's ruling that it cannot rehear a case without new evidence that was unavailable at the original hearing).

agrees with the standard for granting a stay that Gelman recites. Motions at 9. However, Abdo disagrees with Gelman's conclusion: Gelman does not meet the standard for the Board to grant the Stay.

The factors the Board should consider in evaluating Gelman's Stay request are whether: (A) the movant is likely to prevail on the merits, (B) the movant will suffer irreparable injury if denied, (C) the non-moving party is harmed by the stay, and (D) the public interest favors granting the stay. All of these factors point towards the Board denying the Stay.

A. Gelman Is Unlikely to Prevail on the Merits.

Gelman is unlikely to prevail on the merits of its concerns because the Board was well aware of any effects of the zoning relief on Gelman's property when the Board granted the relief. Gelman has the virtually insurmountable task to convince the Board to reverse itself without any new information that the Board did not have before it when it considered the Abdo application initially.

B. Gelman Will Not Suffer Irreparable Injury if the Stay Is Denied.

Gelman offers nothing but speculation that it will be irreparably injured by the zoning relief granted to Abdo. Abdo's Project proposes to further increase the attractiveness of the 14th Street, N.W. corridor by adding new residents, office space, and additional, refurbished retail space, all in keeping with the neighborhood's historic character. Investment in the neighborhood, such as the proposed redevelopment of the Property, is more likely to cause an *increase* in Gelman's property values rather than any injury or harm to Gelman. A small percentage of Gelman's tenants might face a loss of some light and air given that the Project will replace single story structures, but this does not conclusively demonstrate that Gelman or its tenants will be irreparably harmed.

C. Abdo Is Harmed by the Stay.

On the other hand, staying Abdo's Project now will harm Abdo. Abdo is moving forward with its Project in order to compete with a number of other developments that are at various stages of planning and construction in the 14th Street, N.W. and surrounding environs. Abdo has committed significant—and unrecoverable—resources to its professionals and consultants to move forward with the Project, which will be a substantial asset to the neighborhood. If the Project is substantially delayed pending rehearing and reconsideration, Abdo faces the very real and costly prospect of paying high holding costs, losing retail tenants, coming on line behind other residential projects, and facing depressed rents or other adverse market conditions. Gelman understates the adverse effects on Abdo of the Stay request. As the Board is well aware, it has a perpetually full docket, and the wait time for a rehearing will not be insignificant. Moreover, Abdo has already committed significant time and expense to its good faith effort to lead multiple rounds of community engagement. Additional review and delay is unwarranted.

D. The Public Interest Favors Denying the Stay.

Abdo agrees that BZA should make its decisions with all available information. However, Gelman offers no new information, so the decision that the Board already made is an optimal one. The public interest would not be served by wasting the Board's time with a costly and time-consuming contested hearing that ends up with the same result. Moreover, broad public support exists for Abdo's Project, as demonstrated by the letters of support and positive feedback from neighborhood residents and businesses. See Order at 2. The Project fits well in the scale and context of 14th Street, N.W. and should proceed without further delay.

V. CONCLUSION

For the reasons given above, the Board should deny Gelman's Motion and Stay requests.

March 14, 2013

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Certificate of Service

I hereby certify that I served the enclosed document to the following addresses by hand delivery or first class mail on March 14, 2013:

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