

January 29, 2016

BY IZIS ELECTRONIC FILING (bzasubmissions@dc.gov)

Marnique Y. Heath, AIA
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: Opposition to Time Extension and Minor Modification
BZA Application No. 18514A
1120 Park Street, N.E.
Square 0987, Lot 0008 ("Property")

Dear Chairperson Heath and Members of the Board:

Please enter the appearance of this firm on behalf of Ms. Patricia A. Schaub at 1118 Park Street, N.E., the immediately abutting neighbor to the Property. This firm is also counsel for Ms. Schaub, as Appellant, in the related BZA Appeal No. 19092. The requested modification is an explicit admission that the BZA Appeal is valid and should be granted summarily by the Board.

Ms. Schaub, by and through undersigned counsel, respectively requests party status in opposition and submits this opposition to the late filing and request for modification in BZA Order No. 18514.

I. Ms. Schaub is Entitled to Party Status

As amply demonstrated by her bringing BZA Appeal No. 19092 and her immediate proximity to the Property, Ms. Schaub is entitled to party status in opposition pursuant to 11 DCMR 3106.2. It is also undisputed that Ms. Schaub's interests will be singularly more affected by the violation of the original BZA Order and the remedial modification now being untimely requested. The proposed garage and roof deck is significantly taller than originally approved. The proposed garage without the roof deck is at least two and half feet taller than Ms. Schaub's eight foot high garage. The proposed garage with roof deck is almost six feet taller than Ms. Schaub's garage. The proposed structure is located on the property line immediately adjacent to Ms. Schaub's long-standing and lower scale one-story garage. The increased height proposed will uniquely, directly and dramatically have a negative effect on Ms. Schaub's light, air and

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privacy, especially given the narrow and shallow adjoining properties and close proximity and excessive and non-conforming density of the existing row structures.

II. Consideration of the Time Extension and Modification is Entirely Premature

The request for time extension and modification was filed at midday on Friday, January 22, 2016 as the Blizzard of 2016 was descending on the Metropolitan area. Despite ongoing discussions between the parties and active involvement by ANC 6A and the Capitol Hill Restoration Society, the Applicant chose not to provide any of the interested parties with advanced copies of the proposed plans. Further, the Applicant failed to send several exhibits with the original email notification of its modification application, and finally sent those on January 27. Also, without explanation “Modified Plans” were docketed online on January 26, 2016 as BZA Exhibit No. 6. Although the filing nominally meets the ten-day notice required for consideration on February 2, 2016, this very limited time period coupled with the Blizzard and related closings, delays and other circumstances does not provide reasonable or adequate time for meaningful participation and action by the interested parties, including ANC 6A.

The Property is located in the Capitol Historic District with the Historic Preservation Review Board (“HPRB”) having jurisdiction to review the proposed garage and roof deck. The Applicant has been repeatedly informed of the need for HPRB review, but inexplicably has not done so. Remarkably, although the original BZA application was filed in December 2012 - more than three years ago, the Applicant has still not completed HPRB review and approval for the garage and roof deck. Without HPRB approval of the proposed height, scale, massing, set back and design of the proposed structure, any BZA action continues to be premature, speculative and a misuse of the Board’s limited resources.

III. The Modification Request is Untimely and Without Reasonable Justification

BZA Order No. 18514 was dated October 15, 2013. On December 5, 2014, the Applicant filed a building permit application for the garage and roof deck, including plans substantially similar to the plans submitted for this modification, including specifically the height of the proposed garage and roof deck which substantially exceeded the height originally approved by the Board. Ms. Schaub timely filed BZA Appeal No. 19092 on July 20, 2015 challenging among other issues the excessive and unapproved height of the proposed structure. The two-year time period for filing for a modification of the originally approved plans expired on October 15, 2015. This modification was filed on January 22, 2016 – more than three months beyond the deadline.

Despite full knowledge that a modification was required to proceed with the project as shown on the original permits plans and proposed modified plans no later than the filing of BZA Appeal No. 19092, the Applicant chose not to act in a timely manner. The Applicant could have

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submitted the DCRA permit plans to the BZA within the two-year time period, but chose not to do so. The Applicant could have submitted altered plans to the BZA at any time during the 2 year revisions window, but chose not to do so. The Applicant has offered no reasonable explanation or good cause for failure to act in accordance with the Board's rules. Again, the Applicant has not met its responsibilities and any extension is unwarranted and an attempt to misuse the Board's procedures and limited resources. If the Applicant wants to change their plans after the 2 year time limit has expired, they should submit a new application to the BZA.

IV. The Modification is Not Minor and Will Substantially Harm Ms. Schaub

The variances and exceptions granted in the October 2013 order were tied to specific plans, and the changed plans no longer justify the relief granted.

The proposed structure is a foot taller than the plans on which the BZA issued its October 2013 order. Given the small, narrow lots, and the close proximity of the Applicant's structure to Ms. Schaub's yard and house, the higher plans will significantly affect the light, air and privacy of her house and yard. The higher roof deck will allow a clear view into two of her bedrooms, and reduce light and air into her yard and bedrooms. See Exhibit A. (Photographs of the rear of the properties, including Ms. Schaub's existing garage and a view of the proposed garage and roof deck from Ms. Schaub's house).

The Applicant proposes to build a wall that encompasses aspects of Ms. Schaub's wall. Ms. Schaub has not agreed to this and seeks to have the Applicant build their own stand alone wall that abuts, but does not interact with, attach to, or otherwise use her garage. Such a stand alone wall is not shown in the plans and may reduce the parking dimensions further and modification of the relief granted in the October 2013 BZA Order.

The modified plans show a structure that no longer qualifies as a garage. Notably, the revised plans show the addition of hot water, a sink, multiple lighting fixtures and multiple and enhanced electric outlets and service. The addition of a sink will reduce the length and width available for parking; the dimensions are not shown on the plans and further reduction in the unobstructed parking length and width has not been requested. The Zoning Regulations, 11 DCMR §199.1 defines a garage as follows:

“Garage, parking - a building or other structure, or part of a building or structure, over nine hundred square feet (900 ft.²) in area, used for the parking of motor vehicles without repair or service facilities. The term parking garage may include a parking garage accessory to the principal use, but shall not include a mechanical parking garage.”

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The structure as shown in the revised plans with the new sink basin obstruction cannot reasonably house a car. The parking area is significantly smaller than a compact car space (8'x16") and would not accommodate a Chevrolet Impala (6'-1" x 16'-9") or a Chevrolet Cobalt (5'-8" x 15'-1"). The Applicant does not own any other motor vehicles that could fit in the garage. Applicant told Ms. Schaub that he plans to use the structure for his bicycle business which is not permitted in the R-4 zone. The modifications to the plans support this unauthorized use.

Finally, the Applicant's erratic process for designing and gaining approvals for the proposed structure undermines the ability of neighbors and the community to reasonably weigh in on the structure. The Applicant did not submit these plans to the ANC, Capitol Hill Restoration Society, or to his adjacent neighbor, Ms. Schaub, prior to filing them with the BZA. Frequently changing plans and representations as to what the Applicant is building further reduces Ms. Schaub's ability to protect her interests through the processes in place to do so, and is costing Ms. Schaub significant amounts of money to protect her property.

Ms. Schaub requests that the BZA deny Applicant's request to amend the plans after the expiration of the two year revisions window, or in the alternative, to reject the proposed plans. Neither of these actions would preclude Applicant from resubmitting the plans in a new docket and completing the permitting process with a single set of plans after HPRB review.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.



John Patrick Brown, Jr.



Kate M. Olson

Enclosure (Exhibit A).

By Electronic Mail

cc: Ms. Patricia A. Schaub
Mr. Phil Toomajian, Chair, ANC 6A (6A02@anc.dc.gov)
Mr. Chris Ward, ANC 6A03 (6A03@anc.dc.gov)
S. Hayes Edwards, Jr., Esquire (hedwards@mcmillanmetro.com)
James M. Brault, Esq. (jmb@braultgraham.com)
Maximilian L.S. Tondro, Esquire (maximilian.tondro@dc.gov)
Gary Peterson, Esquire, CHRS (pgaryl@comcast.net)

Exhibit A



