



BEFORE THE ZONING COMMISSION AND
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



FORM 150 – MOTION / REQUEST

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.: 18568

Motion/Request of: ☐ Applicant ☐ Petitioner ☐ Appellant ☐ Party ☒ Intervenor ☐ Other _____

Motion/Request to:

- | | |
|---|--|
| ☐ Amend the Relief Sought | ☐ Reopen a Hearing (before decision) |
| ☐ Waive Posting / Affidavit of Posting Requirement | ☐ Dismiss on the Merits |
| ☐ Waive Notice Requirement to Shorten Period of Time Case is
Advertised in the <i>DC Register</i> | ☐ Postpone |
| ☐ Accept a Proffered Expert Witness | ☐ Continue |
| ☐ Allow Non-Authorized Representative to Perform Cross-
Examination | ☐ Correct a Transcript |
| ☐ Reopen the Record | ☐ Waive the following Time Deadline (i.e. 14-day filing deadline):
_____ |
| | ☒ Other: <u>Request for Hearing</u> |

Points and Authorities:

On a separate sheet of 8 1/2" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion or request, including relevant references to the Zoning Regulations or Map.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2013

I served a copy of the foregoing Motion or Request to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of

Planning in the above-referenced ZC or BZA case via: ☐ Mailed letter ☐ Hand delivery ☒ E-Mail ☐ Other _____

Signature:

Print Name:

Scott H. Rome, Esq.

Firm/Organization:

The Veritas Law Firm

Address:

1229 19th Street NW, #320, Washington, DC 20036

Phone No.:

202-686-7600

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srome@theveritaslawfirm.com

To be notified of hearing and decision: (Maker of Motion/Request or Authorized Agent)

In the event an authorized agent files a Motion or Request on behalf of the Maker of the Motion or Request, a letter signed by the Maker of the Motion or Request authorizing the agent to act on his/her behalf shall accompany the notice of application, petition, or appeal.

Print Name:

Al's Market, LLC

Address:

1346 T Street, NW, Washington, DC 20009

Phone No.:

202-744-9307

E-Mail:

roseprevite@gmail.com

Board of Zoning Adjustment
District of Columbia
CASE NO. 18568
EXHIBIT NO. 31

Before the
DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 18568

REQUEST FOR HEARING ON PREVIOUSLY FILED MOTION TO DISMISS

Intervenor, Al's Market, LLC (hereinafter "Intervenor"), filed a Motion to Dismiss in this Appeal on May 9, 2013. The full Appeal is currently set for hearing on June 18, 2013 at 1:00 p.m. Given the circumstances surrounding the Appeal, and the Motion filed previously by the Intervenor, Intervenor now petitions the Board of Zoning Adjustment **to set a hearing on the previously filed Motion to Dismiss prior to the currently scheduled hearing date of June 18, 2013.** The hearing date on the appeal may remain June 18, 2013, but due to the hardships in preparing for a full hearing and the costs associated with a time delay, a prior hearing on the simple Motion to Dismiss makes financial and administrative sense for all parties involved. The Motion to Dismiss asserts that the appeal is untimely, and that the Appellant lacks standing, and these simple issues should be able to be resolved quickly, during a very brief hearing, prior to the Appeal hearing.

The delays involved with the currently pending appeal have caused significant harm to Intervenor, as Intervenor has expended significant sums on the development of this project and the pending appeal, which has brought uncertainty to its legal status. The pending motion to dismiss, however, surrounds two simple preliminary legal issues, and if found in favor of the Intervenor, would eliminate the need for further delays and a lengthy hearing. It is a tremendous hardship to force the Intervenor, a small business seeking to operate in the District, to prepare for a fully contested appeal hearing, when this simple procedural motion may resolve the issue. The parties will not need a full contested hearing period in order to argue the motion to dismiss and such a matter could likely be addressed in less than one hour on any date prior to June 18th.

It is in the Board's interest to hold a prior hearing on the Motion to Dismiss, because if the motion is successful, neither the parties, the Intervenor, nor the Board will have expend scarce time and resources on preparing for and holding the full hearing on the appeal. The costs associated with this appeal continue to escalate, and holding the motion hearing at the same time as the full BZA appeal would force the parties to prepare for both the procedural and substantive arguments in this matter, causing it to expend more time and money towards this Appeal.

In addition to the inefficiencies and unnecessary costs of having to prepare for the appeal on the same date as the motion hearing, waiting until the previously scheduled date for the motion hearing will also prejudice the Intervenor because of the continued carrying costs involved with waiting for a decision on the merits. At this point, Intervenor has already spent nearly \$60,000 on developing this project. Even a delay of a few weeks will result in continued rental payments, utilities payments, and other associated costs, in addition to a delay building out the premises due to the uncertainty of the appeal.

The Motion to Dismiss plainly spells out that the Appeal in this matter is untimely, and that the Appellant lacks standing. Given these procedural flaws, it is imprudent and inefficient to refuse to decide these issues until a fully contested appeal. Furthermore, given the hardship the Appeal process has caused and continues to cause the Intervenor, a date for a hearing on Intervenor's Motion to Dismiss should be set as soon as possible.

Respectfully submitted,

AL'S MARKET, LLC
BY COUNSEL

A handwritten signature in blue ink, appearing to read "S. H. Rome", is written over a horizontal line.

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