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August 15, 2013

Via First-Class Mail and Email

Lloyd Jordan, Chair
Board of Zoning Adjustment
441 4th Street, N.W.
Washington, D.C. 20001

Re: Consent Motion in Appeal of Building Permit No. B1302395

Dear Chairman Jordan:

I have enclosed with this letter one original and fifteen (15) copies of the following documents:

1. Copy of Appeal form 150 -- Motion/Request;
2. Letter of Attorney Authorization from Appellant Ginia Avery;
3. Consent Motion to Stay BZA Proceedings in Appeal of Building Permit No. 1302395; and
4. Certificate of Service.

Thank you.

Very truly yours,



Michael Kroopnick

Enclosures

cc: Phil T. Feola, Esq.
Cynthia A. Giordano, Esq.
Jay Surabian, Esq.
Harriet Tregoning, D.C. Office of Planning

Board of Zoning Adjustment
District of Columbia
CASE NO.18618
EXHIBIT NO.17



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.: BZA Appeal No. 18618

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

Motion/Request to:

- | | |
|--|---|
| <input type="checkbox"/> Amend the Relief Sought
<input type="checkbox"/> Waive Posting / Affidavit of Posting Requirement
<input type="checkbox"/> Waive Notice Requirement to Shorten Period of Time Case is Advertised in the <i>DC Register</i>
<input type="checkbox"/> Accept a Proffered Expert Witness
<input type="checkbox"/> Allow Non-Authorized Representative to Perform Cross-Examination
<input type="checkbox"/> Reopen the Record | <input type="checkbox"/> Reopen a Hearing (before decision)
<input type="checkbox"/> Dismiss on the Merits
<input type="checkbox"/> Postpone
<input type="checkbox"/> Continue
<input type="checkbox"/> Correct a Transcript
<input type="checkbox"/> Waive the following Time Deadline (i.e. 14-day filing deadline): _____
<input checked="" type="checkbox"/> Other: <u>Stay Proceedings</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 1 5 day of August, 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:

Michael Kroopnick

Print Name:

Michael Kroopnick

Firm/Organization:

Law Office of G. Macy Nelson, LLC

Address:

401 Washington Avenue, Suite 803

Phone No.:

410-296-8166 x116

E-Mail:

mkroopnick@gmacynelson.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:

Michael Kroopnick

Address:

401 Washington Avenue, Suite 803

Phone No.:

410-296-8166 x116

E-Mail:

mkroopnick@gmacynelson.com

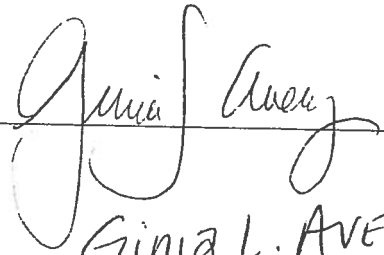
August 2012

Dear Members of the Board of Zoning Adjustment:

I, Ginia L. AVERY, authorize Michael Kroopnick, Esq., a member of the DC bar and Of Counsel to the Law Office of G. Macy Nelson, LLC to act as my agent and represent me before the Board of Zoning Adjustment with respect to the attached Appeal.

Thank you.

Respectfully Submitted,


Ginia L. AVERY

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Appeal of Ginia Avery, et al.

Appeal No. 18618

* * * * *

**CONSENT MOTION TO STAY BZA PROCEEDINGS IN APPEAL OF
BUILDING PERMIT NO. 1302395**

Appellants appealed building permit No. 1302395 to the Board of Zoning Adjustment (“BZA”). This building permit is a revision to building permit No. B1202925, which Appellants also appealed to the BZA. The BZA dismissed Appellants’ appeal of building permit No. B1202925. The BZA found that it lacked jurisdiction to hear that appeal since Appellants’ appeal was based on whether all of the requirements of large tract review (“LTR”) were met. Appellants filed a Petition for Review of the BZA’s decision in the D.C. Court of Appeals. Thus, the question of whether the BZA had jurisdiction to hear an appeal of a building permit based on a challenge to LTR is pending before the D.C. Court of Appeals.

Subsequently, Appellants challenged the issuance of building permit No. 1302395 since it was predicated on seeking revisions to the original building permit that Appellants challenged. Nevertheless, all of the parties to this proceeding recognize that this appeal presents the same jurisdictional issues that Appellants’ original appeal presented. Therefore, they agree to seek a stay of Appellants’ appeal of Building Permit No. 1302395 until the D.C. Court of Appeals issues a decision in Appellants’ original appeal.

Conclusion

For the reasons stated above, the parties respectfully request that the BZA grant their Consent Motion to Stay BZA Proceedings in Appeal of Building Permit No. 1302395.

Respectfully Submitted,



Michael Kroophnick
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Suite 803
Towson, Maryland 21204
Attorneys for Appellants



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*Attorneys for Missouri Avenue Development
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Washington, D.C. 20006-3434
Attorneys for Wal-Mart, Inc.



Jay Surabian
Assistant Attorney General
Dept. of Consumer and Regulatory Affairs
("DCRA")
1100 4th Street, S.W.
Washington, D.C. 20024
Attorney for DCRA

CERTIFICATE OF SERVICE

I hereby certify that a copy of the parties' Consent Motion to Stay BZA Proceedings in Appeal of Building Permit No. 1302395 was mailed first-class postage, pre-paid, on this 15th day of August, 2013 to:

Phil T. Feola, Esq.
Goulston & Storrs
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Assistant Attorney General
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Counsel for DCRA

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Counsel for Walmart, Inc.

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