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Real Estate | Zoning | Business Law

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March 14, 2014

By E-Mail Submission

Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20001
bzasubmissions@dc.gov

**Re: Response of Party Opponent Metropole Condominium Association to the Applicant's
April 11, 2014 Submission; BZA Application No. 18638, 1456-1460 Church St, N.W.**

Dear Chairman Jordan and Members of the Board.

This letter is submitted in response to the Applicant's submission of Friday afternoon, April 11, 2014. The Metropole Condominium Association urges the Board to deny this late request, as being filed out of time, and not justified in substance. The Applicant claims that it is an unusual situation to have Board members disagree on a decision or to disagree on what information is necessary to meet the variance test and that therefore the Applicant should get a second chance to prove its case. The Metropole asserts that having a mixed vote on the Board is not extraordinary at all, and it is much less extraordinary than re-opening a hearing after three Board members have already voted on a decision.

This late request is presumably based on the Applicant's belief that it did not need to address the issue of the high degree of variance relief requested. The D.C. Court of Appeals has stated clearly, however, that the degree of variance requested is one of the factors the Board may consider in the practical difficulty analysis.¹ Moreover, the party opponent stated this position throughout these proceedings, so the Applicant had fair notice from the beginning what it was required to present and to prove. For these reasons, the party opponent respectfully opposes the Applicant's request.

Sincerely,



Martin P. Sullivan

Enclosure

cc: Carolyn Brown, Esq., for the Applicant
Office of Planning, Stephen Gyor
ANC 2F

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18638
EXHIBIT NO. 52

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¹ See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990), in which the Court ruled "In order for BZA to deal with circumstances such as those presented in the application for variances in this case, BZA has the flexibility to consider a number of factors including, but not limited to 1) the weight of the burden of strict compliance, 2) the severity of the variance(s) requested, and 3) the effect the proposed variance(s) would have on the overall zone plan [Emphasis added.]"