



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.: 18664

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>Motion for Stay and/or Expedited Hearing Date</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 9 day of September, 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: Martin P. Sullivan

Firm/Organization: Sullivan & Barros, LLP

Address: 1990 M Street, NW, Suite 200, Washington, DC 20036

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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.

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Board of Zoning Adjustment
District of Columbia
CASE NO. 18664
EXHIBIT NO. 13

**BZA APPEAL NO. 18664
OF CHARLES C. PARSONS**

**EMERGENCY MOTION FOR STAY OF THE BUILDING PERMIT
AND/OR AN EXPEDITED HEARING DATE**

The Appellant in BZA Appeal No. 18664 hereby requests that the Board of Zoning Adjustment stay the construction work being undertaken pursuant to Building Permit No. 1210100 (the “Building Permit”), which is the permit being challenged in this Appeal, until such time as the BZA issues a decision.

I. Motion for Stay of Construction Under the Building Permit.

In order to prevail on a motion for stay, the party seeking the stay must demonstrate that it is likely to prevail on the merits, that irreparable injury will result if the stay is denied, that the opposing parties will not be harmed by a stay, and that the public interest favors the granting of a stay. See *Kuflom v. District of Columbia Bureau of Motor Vehicle Services*, 543 A.2d 340, 344 (D.C. 1988) (administrative agency required to consider the four specified factors in considering a motion for stay). Where the last three factors strongly favor temporary relief, only a substantial showing of likelihood of success, not a “mathematical probability,” is necessary for the grant of a stay. See *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987).¹

1. Likely to Prevail on the Merits.

The Appeal involves, principally, the question of whether or not proposed construction of a trellis (the “Trellis”) is taking place on the main floor of a building or below that main floor. If the Trellis is to be located below the main floor of the building, then the proposed construction is

¹ The BZA has noted in several cases its authority to stay construction under a challenged building permit, pursuant to D.C. Code § 6-641.07(g) (1) and (4). See BZA Order No. 15129, an Order granting a stay of further construction pending a BZA appeal.

clearly in violation of the Zoning Regulations, as noted in the Appellant's statement included with the Appeal.

The "Main Floor" in the Zoning Regulations is defined as "the floor of the story in which the principal entrance of a building is located." 11 DCMR § 199.1[Emphasis added.] By the plain language of this definition, and the use of the word "the," there simply can not be more than one main floor in a building. Since the principal entrance to the subject building is located one full level above the proposed Trellis, the Trellis is clearly below the main floor. As such, the Trellis does not provide a legal building connection sufficient to make the principal house and the proposed accessory structure in the rear of the property (the "Accessory Structure") one building for zoning purposes. Because it is not a single building, the Accessory Structure is not part of the main house but is considered an accessory structure under the Zoning Regulations, and is therefore subject to the height restrictions for accessory structures. As an accessory structure, the Accessory Structure is limited to a height of 15-feet and one story. The proposed Accessory Structure will have a height of two stories and will be greater than fifteen feet in height, and is therefore a clear violation of the Zoning Regulations.

2. Irreparable Injury Will Result.

As of September 13, 2013, the owner of the subject property had not yet begun construction on the Trellis or the Accessory Structure. If a stay is not granted, it is likely that the Trellis and the Accessory Structure will be substantially completed prior to the scheduled December 3rd hearing date. If the Accessory Structure – a two-story structure – is completed, Appellant believes it unlikely that the owner will ever remove the Accessory Structure even if this Appeal is granted. The Appellant lives at 129 C Street, SE, six doors down from the property owner's property. Construction of the two-story structure – where an accessory structure is

lawfully permitted only one story and no more than fifteen (15) feet in height – and the retention of that structure, will cause irreparable harm to the Appellant and the surrounding neighborhood because of its additional height above the permitted height for accessory structures.

3. Opposing Parties Will Not Be Harmed.

The subject property owner did not begin construction until shortly before this Appeal was filed, and construction of the challenged Trellis and Accessory Structure was not begun prior to filing of the Appeal. The property owner has full notice that the Building Permit is being challenged and that it is subject to revocation. Therefore, there is no harm to that property owner from staying construction under the Building Permit until the Appeal is heard and decided.

4. Public Interest.

The public interest is favored by the granting of a stay in this situation. The property owner is proposing constructing a two-story structure where only a one-story structure is permitted. If allowed to be built, and then overturned, not granting a stay would result in the eventual tear-down of new construction, which would be a detriment to the surrounding neighborhood and the public interest.

II. Motion for an Expedited Hearing Date.

An expedited hearing date may possibly resolve many of the issues noted above, and could limit the time of any stay granted per the above request. An expedited hearing date would be of great benefit to both parties. The property owner (through their counsel) has been asked for and has granted their consent to the filing of this request for an expedited hearing date (but has not consented to the filing of the Motion for Stay).

For the reasons stated above, the Appellant respectfully requests that the Board grant this Motion, in whole or in part.

A handwritten signature in black ink, reading "Martin P. Sullivan". The signature is written in a cursive style with a large, stylized 'M' and 'S'.

Martin P. Sullivan