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VIA IZIS

January 25, 2015

To: Chairman Lloyd Jordan, D.C Board of Zoning Adjustment

RE: BZA Case Nos. 18852 & 18853:

This letter contains:

- 1) Our response to Applicant's Letter of January 23, 2015 affirming our request for Party Status Application as timely and objecting to their request to remove any exhibits from the record.
- 2) As a contingency against adverse determination we make the following Requests:
  - a. Request 1: Pursuant to §3100.5, we request the board to waive the relevant provisions of Chapter 31 and grant us party status.
  - b. Request 2: Pursuant to §3121.9, we request the board to re-open the record and accept all the materials we provided.
  - c. Request 3: Considering the contested nature of this case and in order to make the administrative record complete and amenable to judicial review we request the board to provide Findings of Fact and Conclusions of Law in their order in this case, See *Parsons v. D.C Board of Zoning Adjustment*, No. 11-AA-1606.
  - d. Request 4: We would like our Exhibit 54 to be formally considered a request. The exhibit demonstrates that there is disagreement between agencies in interpreting the regulations pertaining to loading facilities. Because the issue of no loading facilities is very concerning to the

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neighbors and because there is disagreement between agencies we feel the board should fully explain their interpretation of the pertinent regulations in the Findings of Fact and Conclusions of Law in this case.

**1.**

In response to the letter of January 23, 2015 from Goulston & Storrs:

The group seeking Party Status made timely filings on January 5 and January 11, 2015, within the deadline to file 14 days before the public hearing on January 27, 2015. This is pursuant to § 3106.2 that to “participate as a party in a proceeding before the Board, any affected person shall file with the Board, not less than fourteen (14) days prior to the date set for the hearing.”

The upcoming proceeding on January 27 is a public hearing, and a continuation from the previous public hearing. There is nothing in the regulations in Section 3106 that limits affected parties from seeking status for an initial hearing only. Section 3106.2 refers only to “a proceeding before the Board” and not to a specific hearing in a sequence of hearings, or to a hearing at all. Therefore, the applications are timely. Lastly, many in our group have testified in Opposition as witnesses at the December 2<sup>nd</sup> hearing.

At the public hearing on December 2, 2014, a “continued hearing” was scheduled for January 27, 2015 as opposed to a “decision meeting.” This difference was distinguished by Chairman Jordan and Mr. Moy, and is in the record.

It is the understanding of the Opposing Party that the record is open. When the case is “Closed” or “Closed, Pending specific documents”, a note to that effect is posted on the record. No such note has been posted for these cases. The IZIS system shows the case as “Active” and numerous calls and emails to BZA staff for clarification support that the case is open and active. BZA staff assisted in uploading the Exhibits cited by the Applicant.

The Opposing Party intends to appear at the public hearing on January 27 to have our Party Status application reviewed by the Board. We respectfully request the Board to approve our application and hear our position in this important matter, and accept all of our written statement, including the petition (Exhibit 52) which members of this group canvassed and obtained additional 61 signatures from the neighbors.

The combined total of signatures in opposition from two uploaded petitions is 135.

**Contingency Requests:**

**2a.**     Request 1: Pursuant to §3100.5, we request the board to waive the relevant provisions of Chapter 31 and grant us party status.

We believe that this request is not prejudicial to any party. The January 27<sup>th</sup> hearing is a continued hearing and no decision is expected to be rendered. If we are given party status, the applicant can cross examine us during the hearing and subsequently file any rebuttals to any of our claims and submissions.

There is good cause as follows:

1) With outmost respect to the Board, we must point out that the notice sent to all neighbors within the 200 foot radius fails to a) sufficiently explain the dramatic difference between witness and party status, b) incorrectly portrays the burden of proof to become party status as extremely difficult thus essentially detracting neighbors from applying, and c) unnecessarily puts the burden on the recipient of the notice to clarify the difference between a witness status and party status, see Exhibit 30. We believe that it is confusing to a layperson and dampens participation by the neighbors.

- Second to last paragraph on page 1 states that “At the public hearing, all interested persons will be given an opportunity to express their views”. This gives the impression that it is sufficient to simply attend the hearing without explaining that a witness is mostly an observer with two minutes of allotted time and no legitimate seat at the table and no rights in the proceeding.

- While the letter does instruct the recipient to call the Office of Zoning the fundamental differences between witness and party should have been explained in the letter. It is in the Board’s interest to engage the public, so, to extent possible, the information should be made available without the additional burden placed on the public to have to call back to the Office of Zoning.

- **Most importantly**, the letter quotes the regulation that eligibility for party status requires that the person must be “more significantly, distinctly, or uniquely affected”. While this sounds like a very high burden, the letter fails to mention that proximity to the project is key to one’s ability to show such uniqueness – which is also the reason (200 ft radius) why the recipient is getting the letter. In essence, the notification itself is a Party Status Prequalification, yet this is not at all obvious to the recipient.

Ultimately, most individuals that appeared as opposing witnesses are now in this group seeking party status. While we should have been more inquisitive, we maintain that the notification letter was not clear on the importance of obtaining party status. It is noteworthy that many of us, who very much care about this case, and are well educated, fully functioning adults, successful in our respective fields of work, had misunderstood the notice.

2) This is a much contested case. Our party contains many homeowners, who also canvassed and gathered 135 additional signatures in opposition to the relief being sought by the developer from neighbors in the immediate vicinity. The ANC vote was rather split. The Board does not have resources to research opposition arguments to Applicant’s assertions, nor is it its function. By granting us party status, the Board will facilitate a more robust finding of the facts.

**2b.**     Request 2: Pursuant to §3121.9, we request the board to re-open the record and accept all the materials we provided.

We believe that this request is not prejudicial to any party. The January 27<sup>th</sup> hearing is a continued hearing and no decision is expected to be rendered. Thus, there will be sufficient time for the applicant to review and respond, if desired, and for the Board to review any responses.

There is good cause since we believe it is in the Board's interest to consider all viewpoints in this contested case. We provided several documents which address general issues in regards to the Applicant's eligibility for variances and the special exemption. Our detailed rebuttal on the issues concerning transportation/parking studies should provide the Board alternative points of view necessary for a robust finding of facts which is in everyone's interest.

**2c.**     Request 3: Considering the contested nature of this case and in order to make the administrative record complete and amenable to judicial review we request the board to provide Findings of Fact and Conclusions of Law in their order in this case, See *Parsons v. D.C Board of Zoning Adjustment*, No. 11-AA-1606.