

LAW OFFICES
GRIFFIN, MURPHY, MOLDENHAUER & WIGGINS, LLP

MARK G. GRIFFIN (DC, MD)
BRIAN P. MURPHY (DC, MD)
ASHLEY E. WIGGINS (DC, MD, VA)
MERIDITH H. MOLDENHAUER (DC, MD, VA)
KINLEY R. BRAY (DC, MD)
ERIC M. DANIEL (MD, DC)
IRIS E. POSTELNIGU (VA, DC*)
LEADING

DIRECT DIAL: 202-530-7158

DIRECT EMAIL: smazo@washlaw.com

Via IZIS

October 14, 2015

Marnique Y. Heath, Chairperson
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: BZA Appeal No. 19081 – 1828 Ontario Street NW

Property Owner's Opposition to Appellant's Request for Postponement of the Hearing Scheduled for October 20.

Chairperson Heath and Honorable Members of the Board:

On behalf of 1828 Ontario Place LLC, the owner of the subject property, enclosed please find the Property Owner's Opposition to the Appellant's Untimely Request for Postponement of the Hearing in the above-referenced appeal. The appeal is scheduled to be heard before the Board of Zoning Adjustment on October 20, 2015.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP



By: Samantha L. Mazo

Enclosure

Cc (via email): ANC 1C
DCRA c/o Maximilian Tondro
Michael Rafferty

Board of Zoning Adjustment
District of Columbia
CASE NO. 19081
EXHIBIT NO. 28

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**APPEAL OF ANC 1C
REGARDING 1828 ONTARIO PLACE, N.W.**

APPEAL NO. 19081

**PROPERTY OWNER'S OPPOSITION TO THE APPELLANT'S UNTIMELY
REQUEST FOR POSTPONEMENT**

1828 Ontario Place LLC ("Owner"), the owner of the property at 1828 Ontario Place, N.W. (the "Property") that is the subject of the above-referenced appeal strongly opposes the request filed by the ANC 1C (the "Appellant") seeking to postpone the hearing scheduled for October 20, 2015 (the "Untimely Postponement Request" or the "Request"). The request for postponement must be denied because it was untimely filed and not served on the parties, was submitted by a non-authorized party on behalf of the ANC, lacks good cause and any postponement results in prejudice to the Owner. Accordingly, the request for postponement should be denied, and we respectfully request the hearing of this Appeal go forward as planned on October 20.

First, a request for a postponement must be filed at least fourteen days prior to the hearing date (*See* 11 DCMR §3112.10). In this case, the required date to file such a request was October 6, 2015. The Untimely Postponement Request was filed in IZIS on October 9, 2015 and was not posted to the IZIS website until October 13. The Appellant did not seek the Board's approval for this late filing. And pursuant to Section 3110.4 the Appellant failed to state a good cause for which an extension should be granted. Accordingly, the Request was filed beyond the required time frame and should be denied.

Further, the Untimely Postponement Request was required to have been served upon the Owner (or undersigned counsel as his representative) and the Department of Consumer and Regulatory Affairs (“DCRA”) pursuant to 11 DCMR §3111.1. However, neither party was either contacted about postponing the hearing before the Request was filed in IZIS or served with a copy of the Request after it was so filed. Accordingly, the service was deficient providing the Board additional grounds to deny the Request.

Next, it is unclear who the true Appellant is or whom ANC 1C has properly authorized to act on its behalf. As shown by the Form 150 included with the Untimely Postponement Request and the email exchange dated October 13 between the Owner’s representative and the Appellant requesting a courtesy copy of the Request included here as Exhibit “A”, the Appeal appears to be processed by Michael Rafferty, who is not an ANC commissioner. Yet, no documentation exists in the record authorizing a non-ANC commissioner to act on its behalf. Also, the Untimely Postponement Request states that the reason for the postponement is that the “coordination of the multiple appellants is making this date impossible.” However, to date the only “Appellant” in this case is the ANC 1C. While some may claim that this is a distinction without a difference, the Owner asserts that failure to understand or even know the identities of the actual appellants is prejudicial to the Owner and DCRA because they do not know whom to contact regarding the Appeal. This is evidenced by the email exchange in Exhibit “A” in which the Owner’s agent contacted the ANC, which in turn directed those communications to Mr. Rafferty. It was Mr. Rafferty (not the ANC) who supplied the Owner with the courtesy copy of the Untimely Postponement Request she had requested. For these reasons, this Appeal should be dismissed, or at the very least, Mr. Rafferty and all of the “multiple appellants” must request

party status to this Appeal, and the Board can determine if they meet the criteria for party status set out in Section 3106.2.

Further, the supposed rationale for the postponement does not demonstrate good cause. Appellant has requested postponement of the hearing because the “coordination of the multiple appellants is making that date impossible” and “the inability of the one [sic] of the key appellants, an adjoining property owner, to be in town for the hearing that date.” The Owner notes that the notice of the hearing was sent to the Appellant (the only named appellant–ANC 1C) on **July 27, 2015**, almost three months before the October 20 hearing date. A copy of that notice is at BZA Exhibit No. 18, and is attached hereto at **Exhibit B**. Accordingly, the Appellant had more than ample time (almost three months) to mark its calendar and ensure availability of any necessary witnesses on that date.

Further, there is no information in the record indicating that the Appellant had *suddenly* become unavailable for the hearing. Rather, the record is clear that the Appellant knew of the hearing date almost three months in advance and strategically chose to delay its request.

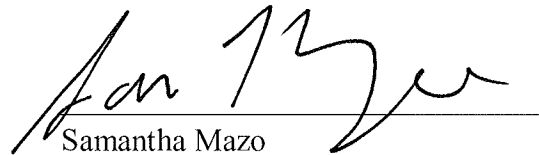
Finally, the Owner would be prejudiced by any postponement of the hearing. The building permit was issued in July 2015 and only allows 12 months to complete construction. The Owner has already lost three months due to the uncertainty raised by the Appeal. This leaves only nine months to complete the project, even with the October 20 hearing date. If the hearing is delayed beyond October 20, then the Owner will have even less time to finish.

Also, it is important to note, that any postponement of the hearing will push construction later into the winter, during which weather delays caused by rain and snow are common and could result in weeks, if not months, of lost construction time. Such delays are clearly prejudicial and should not be permitted without good cause, which is entirely lacking here.

For the reasons stated above, the Owner requests denial of the Untimely Request for Postponement and that the hearing go forward on October 20 as scheduled.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP

A handwritten signature in black ink, appearing to read 'Samantha Mazo', is written over a horizontal line.

Samantha Mazo
Meridith Moldenhauer
1912 Sunderland Place, N.W.
Washington, D.C. 20036
(202) 429-9000

EXHIBIT A

Samantha Mazo

From: Rafferty, Michael <michael_rafferty@fanniema.com>
Sent: Tuesday, October 13, 2015 1:32 PM
To: William Simpson; Samantha Mazo; gabrielamossi@yahoo.com
Cc: Meredith Moldenhauer
Subject: RE: Re: Appeal No. 19081 - 1828 Ontario Pl. NW
Attachments: Form150 BZA 19081 Continuation.pdf

Samantha,

As requested, see attached.

-Mike Rafferty
202-957-1326 mobile

From: William Simpson [mailto:simpson_billy@yahoo.com]
Sent: Tuesday, October 13, 2015 9:46 AM
To: Samantha Mazo; gabrielamossi@yahoo.com
Cc: Meredith Moldenhauer; Rafferty, Michael
Subject: [EXTERNAL] Re: Appeal No. 19081 - 1828 Ontario Pl. NW

Michael,

Can you please follow up directly with Ms. Mazo on this.

Thanks,
Billy

From: Samantha Mazo <smazo@washlaw.com>
To: "gabrielamossi@yahoo.com" <gabrielamossi@yahoo.com>; "simpson_billy@yahoo.com" <simpson_billy@yahoo.com>
Cc: Meredith Moldenhauer <MMoldenhauer@washlaw.com>; "michael_rafferty@fanniema.com" <michael_rafferty@fanniema.com>
Sent: Tuesday, October 13, 2015 12:06 PM
Subject: RE: Appeal No. 19081 - 1828 Ontario Pl. NW

All:

As you are aware, this firm represents the property owner in the above-referenced appeal.

We saw that the ANC filed a request through IZIS to postpone the hearing date. No copy of that request was sent to the property owner's representative. Therefore, could you please send us a courtesy copy for our files?

We would have liked for the ANC to have reached out to us prior to requesting the postponement. However, since that did not occur, we would be open to having a conversation with the ANC at this time.

Please feel free to call me at 202-530-7158.

Best-
Samantha Mazo

Samantha Mazo

1912 Sunderland Place, N.W. • Washington, DC 20036
smazo@washlaw.com • www.washlaw.com

Direct: (202) 530-7158

Office: (202) 429-9000 • Fax: (202) 232-7365

IRS rules restrict written federal tax advice from lawyers and accountants. Nothing in this message (including any attachments) is intended to be used, nor can it be used, for the purpose of (a) avoiding penalties that may be imposed under the Internal Revenue Code or by any other applicable tax authority; or (b) promoting, marketing or recommending to another party any tax-related matter addressed herein. We include this statement in all outbound emails because even inadvertent violations may be penalized.

This e-mail may contain material that is privileged and/or confidential and/or attorney work product. It is for the sole use of the intended recipient. Any distribution or copying of this communication or its contents by anyone other than the intended recipient(s) is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copies from your computer system.

Advisory Neighborhood Commission 1C

PO Box 21009, NW, Washington, DC 20009

www.anc1c.org

Representing Adams Morgan

Commissioners:

October 8, 2015

Julie Seiwel (1C01)

Hector Huezo (1C02)

Ted Guthrie (1C03)

Gabriela Mossi (1C04)

Alan Gambrell (1C05)

Billy Simpson (1C06)

Wilson Reynolds (1C07)

JonMarc Buffa (1C08)

Lloyd Jordan, Chair
Board of Zoning Adjustment
441 4th Street, NW, Suite 200-S
Washington, DC 20001

Re: BZA 19081

Dear Chair Jordan,

As noted, we need to request a postponement of the October 20, 2015 hearing date for the above referenced case. We have multiple issues relating to the current date. Specifically, the coordination of the multiple appellants is making that date impossible, in particular the inability of the one of the key appellants, an adjoining property owner, to be in town for the hearing that date.

Thank you for your consideration.

Respectfully,



Billy Simpson
Chair, ANC 1C



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



FORM 150 – MOTION FORM

THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A
FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.

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.:

Motion of:

☐ Applicant

☐ Petitioner

☐ Appellant

☐ Party

☐ Intervenor

☐ Other _____

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

Points and Authorities:

Please state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form.

CERTIFICATE OF SERVICE

I hereby certify that on this

--	--

day of

--	--	--	--	--	--

,

--	--	--	--	--	--

I served a copy of the foregoing Motion 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:

Address:

Phone No.:

E-Mail:

EXHIBIT B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



JUL 27 2015

Gabriela Mossi – ANC Commissioner 1C04
P.O. Box 21009, Kalorama Station
Washington, DC 20009

Re: BZA Appeal No. 19081

Dear Appellant:

Your appeal has been accepted as complete. You are hereby notified to appear before the Board of Zoning Adjustment (Board) on **Tuesday, October 20, 2015 at 9:30 am**, at the Jerrily R. Kress Memorial Hearing Room, One Judiciary Square, at 441 4th Street N.W., Suite 220 South, Washington, D.C., 20001, for a public hearing concerning the following appeal:

Appeal of ANC 1C, et al., pursuant to 11 DCMR §§ 3100 and 3101, from a May 13, 2015 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1412288, to allow the conversion of a one-family dwelling into a four-unit apartment house in the R-5-B District at premises 1828 Ontario Place N.W. (Square 2583, Lot 438).

REFERRAL TO GOVERNMENT AGENCIES

Your case has been referred to **Advisory Neighborhood Commission (ANC) 1C**. Your case has also been referred to the Office of Planning (OP). These agencies may contact you regarding the appeal.

INTERACTIVE ZONING INFORMATION SYSTEM (IZIS)

In order to access and file documents for this case, log-in to IZIS at <http://app.dcoz.dc.gov>. All documents provided must be submitted through IZIS at least 14 days prior to the hearing. If you submit documents within 14 days of the hearing, you must file a Motion to Request Waiver of Time Requirements (Form 150) in addition to the documents for consideration by the Board.

Individuals and organizations who wish to participate in the appeal may choose to do so as an intervener. This is a form of party status intended for individuals or organizations that have a significant interest in the outcome of an appeal. Review the file in your application frequently prior to the public hearing so that you are prepared to respond to any filings made by other parties.

If you have any questions or require any additional information, please call the Office of Zoning (OZ) at 202-727-6311.

SINCERELY,

A handwritten signature in black ink, appearing to read "Stephen Varga", is written over the typed name.

STEPHEN VARGA, AICP, LEED Green Assoc.
Senior Zoning Specialist
Office of Zoning

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

Board of Zoning Adjustment
District of Columbia
CASE NO. 19081
EXHIBIT NO. 18