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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Board of Zoning Adjustment

PUBLIC HEARING OF THE BOARD OF ZONING ADJUSTMENT

9:43 a.m. to 2:50 p.m.
Wednesday, April 5, 2017

441 4th Street, N.W.
Jerrily R. Kress Memorial Room
Second Floor Hearing Room, Suite 220-South
Washington, D.C. 20001

1 Ms. Fister, Ferster, or --

2 MS. FERSTER: Ferster.

3 CHAIRPERSON HILL: Ferster. Or Mr. Alcorn.

4 MS. FERSTER: Yes, I do represent both of
5 them.

6 CHAIRPERSON HILL: Sorry. I'm having a bad
7 day with names also.

8 MS. FERSTER: You know, our position is that
9 we don't believe that our appeal is technically moot
10 until the permit revocation is final. That said, we
11 very strenuously believe that it would be inefficient
12 and wasteful for this Board to proceed with a hearing
13 on our appeal, given the fact that the owner, while **we**
14 **don't believe that they have filed a valid cross-**
15 **appeal yet**, or that that their cross-appeal if validly
16 filed, could be heard today, may well eventually file
17 a cross-appeal, and proper notice would be given of a
18 new hearing date. And in that context, I think, any
19 new appeal if timely filed, would be the appropriate
20 vehicle to hear the issues in this case.

21 And it's very -- and it's significant when we
22 don't think that you can just sort of rearrange the
23 seats on the table and go forward today because notice
24 is a significant issue. If in fact the owner's appeal
25 is the appeal that is going to be heard, and it is the

1 owners that have the burden of proof. And, the public
2 is entitled to notice of that appeal and opportunity
3 to submit timely intervention requests, et cetera.

4 CHAIRPERSON HILL: Okay. Does the Board have
5 any questions for Ms. Ferster?

6 [No audible response.]

7 CHAIRPERSON HILL: Okay.

8 MS. FERSTER: I would just say one other thing
9 that --

10 CHAIRPERSON HILL: All right. Sure.

11 MS. FERSTER: -- we would think that the
12 appropriate action to take would be to put our appeal,
13 hold it, either defer it -- defer the hearing on it or
14 hold the appeal in abeyance until such time as there
15 is a cross-appeal that is properly before -- or an
16 appeal that is properly before the Board.

17 CHAIRPERSON HILL: Okay.

18 MR. MILLER: I agree with that, Mr. Chairman.

19 CHAIRPERSON HILL: Okay. Well, thanks,
20 Commissioner Miller. You just cut me right there to
21 that -- we can just cut right to the chase. I
22 appreciate that. You know, that's great. I'm trying
23 to get out of here too.

24 So, again, where I am and again, Mr. Brown,
25 you're not going to agree with this, but I would also

1 think that we should hold this -- well, the motion in
2 abeyance until after the revocation time was supposed
3 to happen until like the 19th. Or what was it, May
4 9th. May 9th.

5 And, the issue -- this is also kind of coming
6 from consulting with the Office of the Attorney
7 General who is welcome to chime in on this issue
8 concerning the cross-appeal, which was that **there is**
9 **no regulation that expressly authorizes cross-appeals.**
10 **There's also no regulation prohibiting them.**
11 **However, there are procedures for the appeal.** And so,
12 you know, 32 -- 302.7, **each appeal shall meet the**
13 **requirements of the section before it will be accepted**
14 **by the office for processing.**

15 And then 302.8, and 302.9. And then again,
16 **the forms that need to be properly filled.** I mean,
17 I'm just, I'm thinking what is going to be the
18 cleanest for you in terms of the building owner, and
19 the cleanest for us in order to hear the appeal of the
20 revocation of the permit.

21 I don't know who that OAH thing, you know,
22 muddies the water or changes things for the property
23 owner, but that is what I would be thinking of in
24 terms of how to move forward, if there was a way that
25 we could get this as quickly as possible for the

1 building owner in terms of I don't know how long it
2 takes Mr. Moy for things to kind of move through the
3 process or through the works, given that there was an
4 extensive hearing that happened during the emergency
5 shelter hearing, which bumped them back, where we
6 would have had the conversation about the cross-
7 appeal, which would have been the same conversation.

8 But then it also would have pushed you still
9 until May 7th or May 9th. May 9th, regardless,
10 because that's when the permit will be properly
11 revoked. So, before I turn to any thoughts you might
12 have, Mr. Brown, that's kind of what I think of that
13 the Board should do moving forward. Does the Board
14 have any other thoughts. And I know, Commissioner
15 Miller, you just seem to be in concurrence with this.

16 MR. MILLER: Yes, I am in concurrence with
17 this and I think we should hear the case as soon as
18 possible after May 9th, depending on when the hearing
19 on an appeal filed on the revocation permit issue and
20 it may be that the appellants would withdraw their
21 motion or their case and file, you know, file in their
22 new status opposition to that -- the owner's appeal.

23 But yeah, we should get to that efficient
24 clean hearing on the issues.

25 CHAIRPERSON HILL: All right. Mr. Brown.

1 MR. BROWN: Why don't I suggest this. With
2 everybody reserving their rights, I will immediately,
3 if not sooner, file you know, an appeal in the normal
4 course, with the understanding that that is not going
5 to be handled separately from the others. You know,
6 we can do that quickly and get that process going
7 procedurally from your standpoint, because you need to
8 process it and give notice and whatnot. But take Mr.
9 Miller's suggestion and do this quickly as possible.

10 All the motions to dismiss and other things,
11 are held in abeyance until we have the cross-appeal
12 before the Board.

13 CHAIRPERSON HILL: Okay. And that's where I'm
14 a little lost here. Ms. Glazer, you can help me, that
15 it wouldn't be a cross-appeal, it would be an appeal.

16 And so, we would now be doing -- we can do the same
17 day. We can do, you know, because I want to do this -
18 - I do realize that you guys did get bumped back. I
19 also realize that it looks like this has been around
20 here for like four years.

21 So, I'm you know, I'm not terribly concerned
22 about your speed with which you're trying to do
23 things, but I am cognizant of the fact that we bumped
24 you. And so, but am I wrong, Ms. Glazer, that this
25 would be a separate appeal now, correct?

1 MS. GLAZER: Well, it would be styled as a
2 separate appeal, and the only thing the Board would
3 need to be mindful of are two time periods. One is
4 the May 9th final revocation date, and the other is
5 the 40-day notice period under 504.1. So, Mr. Brown
6 might be able to suggest to the Board when he might be
7 able to accomplish the filing of the appeal, and the
8 Board could probably determine a reasonable time
9 period based on that.

10 MR. BROWN: The appeal will be filed before
11 the end of this week.

12 CHAIRPERSON HILL: Okay.

13 MR. BROWN: If not tomorrow.

14 Two things, I would ask so as not to add
15 further injury to my client, that he be -- we request
16 a waiver of the \$1,000 filing fee for the appeal,
17 which I think is within the Board's jurisdiction to
18 waive. Let me -- none of the appellants, rightfully
19 so, given their status, were required to file an
20 appeal fee. It seems to put my client just --

21 THE COURT: You might as well ask. Go ahead
22 and ask. I'm looking to see whether we can do this or
23 what the precedent is, or whether we're setting
24 precedent. This is the first time I've ever weighed
25 it, so --

1 MR. MOY: Mr. Chairman, unless the ZR-16
2 regulations have changed, typically that decision is
3 decided -- the judgement of the Director of the Office
4 of Zoning. This has happened very rarely in the past,
5 but when it has come up the Board could weigh in with
6 that request to the director. But my understanding
7 the director makes the ultimate decision on the waiver
8 of that filing fee.

9 MR. BROWN: We'll leave it to the director's
10 discretion. My job is to file an appeal quickly.

11 CHAIRPERSON HILL: Okay.

12 MR. BROWN: The other thing I think it's
13 important to understand, or at least for me to
14 understand, is that there are two appeals pending that
15 are not moot as of this point, and will go forward.
16 And then I will file an appeal on behalf of my client.

17 Now, the two appeals that are pending, they
18 have the burden in their appeals of proof. I, on the
19 other hand have the burden of proof in my appeal, so
20 that we need to keep the obligations and duties of
21 each party clearly separate and identified.

22 CHAIRPERSON HILL: No, I agree, and that's
23 helpful. That's why we're trying to keep it as clean
24 as possible. And for whatever it's worth, again, I
25 think that if the director is listening and if it's