DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

July 14, 2017

Via ISIZ & hand delivered

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Washington, DC 20010

Office of Zoning and
Board of Zoning Adjustment
441 4th St, NW Suite 210S
Washington, DC 20001

Re: **Appeal No. 19573 (And Appeal No. 19510, if necessary)**

1) This filing shall supplement the Application for Appeal 19573 and also represents a Request for A Stay of DCRA's Motion to Dismiss Case 19573 prematurely filed prior to official acceptance of Appeal; Request for Further Stay of Motions to Dismiss Case 19510; *and* Appeal of OZ Director's Fee Request Waiver Denial; OR

2) Alternatively, if 19573 is not accepted with sections of zoning code and associated statements previously identified and included in the record of Case 19510 regarding 1st permit into the Appeal 19573 regarding the 2nd amended permit of same property, with the same address and re-approved development plan, this filing shall represent: A) Renewed Motion to Combine Two Appeals based on schedule set for case 19573 *or* B) Renewed Motion to Combine and Continue Case 19510 along with Case 19573 to a Reasonable Earlier Date After Recess; Further Stay of Motions to Dismiss; and Appeal of OZ Director's Fee Request Waiver Denial

Pursuant to Title 11 Subtitle Y, Appellant hereby adds (or if required, makes a request to add) zoning codes initially and previously identified in Appeal 19510, related to one sole development, which DCRA admitted that they erroneously and prematurely permitted in February 2017 (in significant part due to a fraudulent filing by the Intervenors and/or their design representative) and that Appellant asserts in case 19510 and 19573 was erroneously and prematurely approved a second time in May 2017. Substantial justice and equity requires that the codes applicable to all Zoning Administrator decisions initially and previously, not newly identified, related to one sole development at one address adjacent to Appellant, be included in this appeal as they are germane to the Appellant's claims regarding the issuance of the second permit. In support of such states as follows:

1. Pursuant to Section 302.4, "… an appellant shall have *a minimum of* sixty (60) days from the date of the administrative decision complained of in which *to file* an appeal." Appellant has indeed filed her appeal within the allowable timeframe. Appellant filed this appeal on Friday, June 30, 2017, prior to the expiration of this deadline.

2. On the filing date, final acceptance of this appeal was effectively stayed, pursuant to standard OZ practice, which dictates the steps of acceptance as follows: OZ emails confirmation of receipt; emails notification of acceptance of appeal within 5 days of receipt, if deemed complete, or in the alternative, provides notification that additional elements are required prior to appeal being deemed complete and accepted. Lastly, after final acceptance has been emailed, a brief additional time is allowed for the required fee to be paid. On Monday, July 3, 2017, the OZ Director effectively stayed the Application until at least Wednesday July 12, 2017 pending a decision by the BZA, DCRA and the Intervenors

regarding whether or not the application should be joined to appeal 19510 and thereby not subject to the fee. Subtitle Y Sections 302.8 states that: "*No appeal* shall be processed until the application is complete *and* all required fees are paid in accordance with the applicable fee schedule." (See Case 19573 Exhibit 5: email regarding acceptance and fee timeline and email from Director putting evaluation of 19573 acceptance and fee requirement on hold.)

3. Appellant submits that, though the OZ at the direction of the OAG provided her second appeal application to other parties in advance of actual acceptance, due to the window allotted for completion of an appeal during which a required email is to be sent to the Appellant; due to the additional time window for payment; and due to the fact that as of the date of this filing *no* email referencing acceptance or completeness has been received, appeal of the 2nd permit is still effectively stayed and it is within that window where additional documents may be submitted. Though the OZ typically confirms this prior to acceptance of payment, please review confirmation email below:

   "Your application has been successfully submitted and will be reviewed for completeness *within five (5) business days* by Office of Zoning (OZ) staff. *If* it is determined that all the required documents have been submitted, *you will receive an email* instructing you to pay the filing fee within 24 hours or the next business day. If your application is deemed to be deficient, *you will receive an email detailing the items that are required to be submitted* within five (5) business days..."

   On July 11, 2017, the OZ sent an email stating that "*If* the appeal is deemed complete and the fee is paid," the case would be scheduled, and the Board made no comment as to the completeness of the filing.

4. As her appeal of the second permit has not yet been officially accepted or evaluated for completeness, this addendum may be added to Appeal 19573 without premature comment by other parties prior to actual service of the final accepted application. She is completing her application by filing this allowable addendum prior to making payment today, the last step for official acceptance and processing.

5. Though Section 302.13(g) provides that "An appeal may not be amended to add issues not identified in the statement of the issues on appeal, " Appellant asserts that as this appeal is in a holding pattern; it is not an appeal yet, as stated by the Chairman at the hearing; and as these issues are already filed in a statement on appeal, her appeal is not actually being amended to add issues not (previously) identified." To the extent that there is flexibility in the rules with regard to 302.12 h, i, j and k, in the context of the later 21-day deadline, there is also some flexibility with regard to g in the context of the deadline.

6. Pursuant to Subtitle Y Section 302.12, for her initial statement of issues on appeal regarding the second Zoning Administrator decision and second permit issuance and this Appeal, Appellant hereby incorporates by reference all information included in both appeal applications and their attachments; all codes noted in Appellant's statement for appeal 19510 at Exhibit 2; all relevant and/or applicable parts of her Motion to Stay the BZA Order, not including its title and subtitles at appeal 19510 Exhibit 19A1 and 19A2; and the entire record of her filings in case 19510.

7. In the interest of due process and equity, as Appellant requested during the preliminary session and as initially suggested by the Chairman at that session, both appeals should have been combined; with a hearing date scheduled at a reasonable later date; and without a second $1,040 fee to appeal substantially the same development.

8. Though Pro Se Appellant had stated that she had been unable to properly prepare for the hearing in case 19510 for reasons stated elsewhere in that record; was totally unfamiliar with the hearing rules having never previously participated in a BZA hearing; and DCRA's case would not have been prejudiced in

any regard by rescheduling the hearing to a reasonably later date, and particularly not to the substantial degree that Pro Se Appellant's case clearly is, DCRA used their irrefutable weight, power and charge to safeguard the property interests of citizens with bona fide property concerns to instead argue *at length* against the Pro Se citizen's equitable and just request for a later date for combined appeals.

9. As a direct result of DCRA's opposition to even a modest extension of time for Pro Se Appellant, the Commissioners reversed their initial right inclination and refused to combine and extend the hearing date, though warranted. Pro Se Appellant was then placed between a rock and a hard place, and allowed to either: A) combine both cases and present both on that same day (one filed April 7, 2017 and one filed June 30, 2017) without any prior notification or the benefit of the 21-day timeline to furnish supplemental evidence or witnesses for her second appeal or B) schedule her second appeal alone at a later date in October 2017. To protect her appeal rights, she selected the latter "choice."

10. With DCRA having filed a substantive motion related to the second appeal less than 24 hours prior to the hearing date, which Pro Se Appellant became aware of at the hearing, it is now even clearer that combining the cases for hearing on the same day was a transparently inequitable option. After preliminary matters noted above were discussed and/or decided during the break and before the hearing, effectively DCRA served Pro Se Appellant with a "Motion to Dismiss" her second appeal, which they had just filed in ISIZ in case 19510 at Exhibit 33, Line 5 and Line 13 the prior evening. Appellant had 7 days, until at least July 19, 2017 to oppose any motion in writing, as pursuant to Title 11 Subtitle Y Section 407.4, "...all parties opposing a motion shall have seven (7) days from the service of the motion to file and serve a response." As such, combining the cases for hearing on the same day would have eliminated her ability to "file and serve a response" and thereby also violate her due process rights. Therefore the choice to combine the cases, as was her right violated this right, per 407.4, due to the same day presentation requirement.

11. To the extent that Appellant indicated in any regard at the hearing that the issues related to the second ZA decision and permit issuance could somehow remain separate as DCRA asserted, it was due to her mistake and surprise and was inadvertent. The statement on page 1, line 3 of the application, regarding Appeal 19573 is hereby supplemented with "and grants interior and exterior alterations to an existing 2 story cellar row-house flat. New third floor addition, roof deck and rear deck." Numerous alterations were made on the amended plan, not just the side roof deck and numerous developments occurred between the issuance of the first and second permit, which the ZA had a duty to weigh and limit their impact prior to approval.

12. Prior to the hearing July 12, 2017, DCRA had also filed a Motion to Dismiss Case 19510 for failure to state a claim for which relief can be granted, which Appellant did oppose as allowed. Yet DCRA's own testimony at the hearing made it clear that, when taken together, relief can be granted to Appellant for *those same claims* previously identified in the appeal of the 1st permit through the 2nd permit for the same development. For example, though DCRA stated that Subtitle 304.10 applied to the issuance of the 1st permit, they acknowledged that several zoning codes previously identified by Appellant, applied to matter-of-right uses and deviations related to the renewed ZA approval and issuance of the second permit, which remain at issue. This acknowledgment underscored the merit of Appellant's challenges.

13. Between February 10, 2017, the date of the initial permit based on the original BZA order and May 31, 2017, the date of the issuance of the 2nd revised permit, the Zoning Administrator knew or had reason to know that based on all of the new information received by DCRA from the Appellant during that period, the Zoning Administrator's re-issuance of a revised amended permit, without additional changes to the Intervenors' plans, would negatively impact the adjoining property and ultimately violate DC law. Nevertheless, the ZA re-issued their decision ignoring relevant pivotal information.

14. Not including codes previously, though not newly identified, related to the issuance of the second permit for the same development (for two cases which clearly should have been joined with an extended date) would wholly prevent the possibility of equitable closure and a fair hearing regarding pertinent zoning matters and would allow costly BZA appeals ($1040 each) to be decided based on technicalities or gamesmanship instead of on their merit.[1] Allowing the Appellee (the DC Department of Regulatory Affairs) and the Intervenor's Counsel (a very recent former BZA Chairperson) to advance Motions to Dismiss based on technicalities is by no means in the public interest, as they represent and are to be held to the highest standard, where the purpose, intent and spirit of all DC regulations designed to protect the public, including an adjoining neighbor, are supposed to carry considerably more weight than relatively minor technicalities.

15. During the hearing, immediately upon recognizing that justice could not be served without combining the appeals, as zoning codes relevant to the issuance of the second permit had not yet been included in her application for appeal 19573, Pro Se Appellant repeatedly requested that appeal 19510 be amended with a later date, as barring that, she felt certain that justice could not be served. Her fervent request was made at least twice well before the conclusion of the hearing, but denied by the Chairman (who began the discussion of preliminary matters requesting this same equitable result but was swayed by DCRA's request not to join the cases and extend the hearing date, which was not in the public interest) without input from other Commissioners or on-site Attorney General representative.

16. Due to the requirements of the DC system of administrative laws regarding the appeal of 1 development, which Pro Se Appellant Adjoining Owner has been adhering to, she is already required to partition her case against 1 development (which is effectively 1 case) into up to four parts and up to four different venues, currently including the DCCA, the BZA and the OAH, each with a completely different set of rules, comprising hundreds, if not thousands of pages.[2] So at this juncture, the Appellant respectfully requests that the BZA do what is in its power to not allow DCRA or the Intervenors to cut what is effectively one case regarding one development, into even more slices.

17. Due to the highly technical nature of the BZA rules; the extremely high cost for an innocent bystander Pro Se Appellant to mount a BZA appeal to protect her property rights; and the severe consequences of a BZA dismissal pursuant to Subtitle Y Section 600.3, Pro Se Appellant respectfully requests that any dismissal decision or decision to exclusion of codes and issues previously submitted in various forms in the record, be avoided to the fullest extent possible in the interest of substantial justice and deciding the cases on their actual merit.

18. This issues related to this appeal are still by no means moot. It is not true that the development is 80% complete as stated by the Intervenors' counsel at the July 12 hearing; it is less than 20% complete. Property is under roof membrane, not under roof and framing has not been completed. Just 3 days prior to the hearing, the basement had been dug down at least 2 feet to the footing and no foundation had been poured. Not one inspection for any of DCRAs numerous inspection phases showing the progress of construction has occurred and been passed. (Photo to be submitted later as necessary.)

19. If allowed to bring the zoning codes and issues previously noted into this case in the context of the re-issuance of the second permit or allowed to combine the appeals for a date to occur after the August

[1] In context, the DC Court of Appeal fee is $100, an OAH appeal of the same permit on the building code basis involving structural and safety matters, instead of the zoning code is free; and filing a complaint at DC Superior Court for a new case is $120. Taken together, the BZA fee is currently out of line with other fees in the jurisdiction.

[2] This level of coordination presents is an enormous hardship for any regular citizen, including the Pro Se Appellant, who like most regular citizens suddenly subjected to whims of a major abutting development through no fault of their own, cannot afford to pay tens of thousands of dollars to one high powered former BZA Chairperson to represent my property interests, let alone two lawyers, that have represented the Intervenors in every venue in these cases and since their initial BZA hearing.

recess, as numerous special exception codes and Zoning Administrator codes overlap in spirit or intent, Appellant sincerely believes that the equitable resolution of this case before the BZA could lead to the withdrawal of the DCCA case regarding the BZA's summary order. This would ultimately preserve government resources and serve, not defer, the interests of judicial economy and efficiency.

20. Pro Se Appellant sincerely apologizes for any waste of the Commissioners and the OZ time due to her not being fully prepared to explain and argue all aspects of the appeal of the first permit, with her reasons stated elsewhere in the record of case 19510. But now, having experienced the dynamics of the timing and the steps involved in BZA presentation for the first time, she is confident that if given the opportunity and sufficient time to prepare to present her appeal in the context of the second permit with all applicable codes and issues included, she will be prepared to succinctly state her case in an orderly manner.

21. Pursuant to Section 1602.1, "the Director shall be responsible for administering, interpreting, and applying the terms of the fee schedule..." However as the Director denied Appellant's fee waiver request in writing in an email included in the record, Appellant hereby requests that the Board waive the additional fee. Section 1602.4 and 1602.5 states that "Any decision of the Director regarding the application of the fee schedule...may be appealed to the Board by the appellant... The fee appeal shall ... set forth specifically the error allegedly committed by the Director, the grounds for the appeal, and the relief requested." Appellant believes that the Director has broader authority to "interpret" the fee schedule than previously acknowledged and hereby cites all possible grounds in this document as noted above, including the footnote 1, and Exhibit 5. This fee has been paid in the sincere hope of a reversal by the Director and/or the BZA of this unreasonable requirement given the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing 1) This filing shall supplement the Application for Appeal 19573 and also represents a Request for A Stay of DCRA's Motion to Dismiss Case 19573 prematurely filed prior to official acceptance of Appeal; Request for Further Stay of Motions to Dismiss Case 19510; *and* Appeal of OZ Director's Fee Request Waiver Denial; OR 2) Alternatively, if 19573 is not accepted with sections of zoning code and associated statements previously identified and included in the record of Case 19510 regarding 1st permit into the Appeal 19573 regarding the 2nd amended permit of same property, with the same address and re-approved development plan, this filing shall represent: A) Renewed Motion to Combine Two Appeals based on schedule set for case 19573 *or* B) Renewed Motion to Combine and Continue Case 19510 along with Case 19573 to a Reasonable Earlier Date After Recess; Further Stay of Motions to Dismiss; and Appeal of OZ Director's Fee Request Waiver Denial was emailed this 14th day of July 2017 upon:

The following parties and counsel appeared in the agency below:

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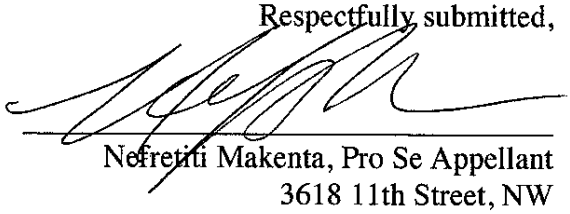
Respectfully submitted,



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