

To: DC Board of Zoning Appeals

Subject: Case 19608 Notice Grave Concern #2

Date: November 3, 2017

From: 1332 Vermont Avenue Partnership, Bernie Robinson, Managing Partner

We have grave concern that the development team for 1310 Vermont Avenue, NW, is still not providing the required public notice of the December 13, 2017, continuation of November 1, 2017, hearing on this case. The required notice of the November 1 hearing was NOT provided, as noted below. Although a continuation of the hearing perhaps does not require a new posted notice, the absence of a proper PUBLIC NOTICE for the November 1, 2017 hearing would suggest that a conscientious development team, in good faith, reach out to the public as required by law and as requested below.

The PUBLIC NOTICE rules are meant for all, and should not be waived in favor of certain developers. Our concern is heightened by recent obfuscation of construction details, including lack of architectural plans, by this same developer who recently damaged neighboring property in a recent project on the same block of Vermont Avenue and who has repeatedly failed to remedy those damages.

1. **November 1, 2017, we attended the hearing for this case.** The PUBLIC NOTICE issue was not raised for preliminary consideration before the hearing, was not raised at the beginning of the individual case hearing, and was raised only in a rather informal and confusing manner as an afterthought in the case hearing.
2. **The appearance of only two opposition witnesses confirmed the inadequacy of the PUBLIC notice:**
  - a. One witness, from Mount Olivet Lutheran Church, confirmed that he had been told informally of the hearing. However, he was very surprised to learn that the Applicant proposed to build nine housing units to replace the single-family dwelling presently on the site. He obviously had not read the PUBLIC NOTICE "posted" at the property because of the substantial noncompliance of the notice as described in 3. below. (The small font in a notice obscured by window reflections with no property front sign is basically not visible from the sidewalk.)
  - b. The second witness, from Vermont Avenue, did not learn of the hearing from the Public Notice, but from a neighbor to the proposed development site who was concerned about the development team's previous damage to adjacent property on Vermont Avenue. The statement that, "You were here last Wednesday, and you are here today..." does not constitute proof of the Public Notice posting.

In fact, it is remarkable that two opposition witnesses appeared even without proper PUBLIC NOTICE. How many witnesses and concerned neighbors would have appeared if proper PUBLIC NOTICE had been given?

**3. PUBLIC NOTICE posting requirements were NOT met by the sign posted at 1310 Vermont:**

a. The hearing date on the PUBLIC NOTICE was not corrected until less than one week before the November 1, 2017, hearing. See Exhibits #40 and #43.

b. No signs were placed at each street frontage of the property. Title 11, Zoning, Subtitle Y, BZA Rules of Practice and Procedure, Chapter 4, Pre-hearing and Hearing Procedures: Applications, Subparagraph 402.4 states,

“The notice required by Subtitle Y Sec 402.3 to be placed upon an applicant’s property shall be posted in plain view [see Point 1. below] of the public at each street frontage on the property [see Point 2. below] AND [emphasis added] on [see point 3. below] the front of each existing building located on the subject property.”

1. Attached photo IMG\_00041 shows the only visible PUBLIC NOTICE sign placed on the property. The “plain view” is distorted by the reflections in the window glass during much of daylight hours and with night-time street lighting.
2. Attached photo IMG\_00031 shows no sign posted “at each street frontage of the property.” The sole sign posted is over 22 feet from the sidewalk and the size of the font of the proposal before the BZA precludes anyone, even with 20-20 vision, on the side walk from reading the proposal without vision enhancement devices such as binoculars.
3. The Code requires the PUBLIC NOTICE on the front of the building, not inside a window with reflections obscuring the posting for a majority of each day.
4. Accessibility to the sole posted sign is restricted by a fence and closed gate.

**4. Requested Action:**

As noted in our previous Exhibits, we are seeking compliance with the Code-mandated PUBLIC NOTICE requirements imposed on Applicants for variances from the BZA. With a December 13, 2017, continued hearing date (thank goodness the Applicant’s exhibits were so incomplete and inaccurate that the Board asked for supplemental information and did not close the case!), it should be no problem for the Applicant to comply with the intent of the law:

1. Post a proper notice of the December 13, 2017, hearing continuation on each street frontage for the property.
2. Post a proper notice of the December 13, 2017, hearing continuation on the face of the building—not inside a reflection-obscured window.



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