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August 17, 2000

Received on
8/17/00 AP

Hand Delivery

Sheila Cross-Reid
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W.
Room 210
Washington, D.C. 20001

Re: BZA Application No. 16559, The Field School

Dear Chairperson Reid and Members of the Board:

On behalf of the Applicant in the above-referenced case, we respectfully oppose the inclusion in the record of a letter dated August 10, 2000 and attachments thereto (collectively the "Letter"), submitted by the law firm of Hunton & Williams on behalf of opponents to this application. The Letter purports to be a sur-rebuttal of the Applicant's rebuttal delivered at the July 15, 2000 hearing in this case. However, it is nothing more than a rehash of the opponents' prime arguments and should be excluded from the record because sur-rebuttal is not provided for in the Regulations, it is inappropriate and extraneous to this proceeding.

In the first instance, the Board's procedural rules as enumerated in Chapter 31 of the Zoning Regulations, provides no provision for sur-rebuttal after an Applicant's rebuttal presentation. Thus, the Letter filing is clearly outside of the scope of the Board's own rules. In the second instance, counsel for the opponents complains that these experts are "new" experts and should have been a part of the Applicant's case-in-chief, not its rebuttal. However, Mr. Steven E. Sher, who was listed as a potential witness in the Applicant's pre-hearing submission, only presented testimony on July 25th in direct, and specific, contradiction to the testimony presented by the opponents' witnesses on July 25th. He delivered evidence countering the opponents' land use expert's position on the Comprehensive Plan (which was delivered on July 25th) and the opponents' absurd proposition (also delivered on July 25th) that this 10.5 acre site was too small for The Field School. Thus, by any measure, Mr. Sher's presentation to the Board on July 25th was in direct rebuttal to the opponents' case.

BZA
Case No. 16559
Exhibit No. 474

Board of Zoning Adjustment
District of Columbia
CASE NO.16559
EXHIBIT NO.474

The Applicant's second rebuttal witness, Mr. James Long of Delon Hampton & Associates, delivered testimony to rebut the contentions of the opponents' highway engineer. Mr. Long was hired by the School to make sure that a critical aspect of this case, that is, the entrance to the School on Foxhall Road, would be safe, efficient and workable. While Mr. Long was not listed as a potential witness in the pre-hearing statement, it was only because the issue of the entrance did not arise until long after the Applicant's pre-hearing submission was filed. The School, being more concerned about the safety of cars and students on Foxhall Road than any of the opponents, felt it prudent, and necessary, to find out which of the "experts" was correct with regard to this issue. Obviously, Mr. Long concluded that the Department of Public Works and the Gorove-Slade analyses were correct. The Applicant believed that it was important for the Board to hear this third expert, whose own analysis supports the DPW plan for the Foxhall Road entrance.

Counsel for the opponents' had, and took advantage of, his right to cross-examine these two rebuttal witnesses. The August 10, 2000 letter is merely an attempt to rebolster its case through sur-rebuttal. It ignores the Board's rules and should not be allowed to be made part of the record in this proceeding.

Sincerely,

Phil T. Feola

Paul A. Tummonds

CC: John Fondersmith, Office of Planning
Marie Sansone, Esquire, Office of Corporation Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing letter was hand delivered this 17th day of August, 2000, to the following:

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