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DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
2000 AUG 22 AM 9:21

August 22, 2000

The Hon. Sheila Cross-Reid
Chair
Board of Zoning Adjustment
441-4th St., NW
Suite 210
Washington, D.C. 20011

Re: September 5, 2000 Public Meeting
Agenda Item: *Molm v. Butera*

Dear Madam Chairperson:

Our clients, James and Lee Butera, wish to submit the following statement explaining why the Board of Zoning Adjustment ("BZA") should retain jurisdiction or, in the alternative, refer the matter to the Zoning Administrator for a prompt decision, with BZA retaining jurisdiction to review this matter expeditiously, consistent with the Superior Court's desire to obtain an administrative construction of the zoning code at issue.

The Buteras' Neighbors Bypassed Administrative Remedies To Sue Under A Dubious Theory That Outside Air Compressors Violate The Zoning Code

The Buteras ' next door neighbors, the Molms, claim the Buteras' outside air conditioner condensers, which the Buteras situated following conferences with the Zoning Administrator's Office ("Administrator") violate the zoning code. The Buteras contend the units are "mechanical equipment" which may be placed in yards. If the Buteras are inaccurate, then many houses in D.C. probably have illegal units.

The Molms never went to the Administrator to raise their claims. Instead they bypassed administrative remedies and sued the Buteras in the Superior Court for alleged zoning code violations. The Court granted the Buteras' motion to stay and referred the case to BZA to secure BZA's views on a narrow legal issue, based on undisputed facts: no one questions the units' location or height.

The Law Empowers BZA To Assist The Court

The Buteras' brief submitted to BZA explains why, under Brawner Building, Inc. v. Shehyn,[1] BZA may provide its administrative expertise to the courts. We understand

[1] Brawner Building, Inc. v. Shehyn, 442 F.2d 847, 852-55 (D.C.Cir. 1971).

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there has been a suggestion this matter should be before the Administrator in the first instance, with BZA reviewing the Administrator's decision. This overlooks something: the Buteras are not the ones claiming to be aggrieved by the Administrator's advice. By the same token, the Molms should not profit for their decision to bypass the Administrator. The Court's decision recognized a judicial interest in securing an administrative construction from the body possessing special expertise. BZA is positioned to answer a "special question" of law arising within its jurisdiction.

BZA May Accommodate Any Jurisdictional Reservations By Directing The Zoning Administrator To Hear This Matter While Retaining Jurisdiction

Alternatively, if BZA wishes to accommodate all the parties' interests, including those of the Superior Court, but is uncertain as to its jurisdiction to hear this as an original matter, there is another, simple course. BZA should remand it to the Administrator for a prompt decision, while BZA retains jurisdiction over the Administrator's decision.

The practical result of the Molms' expansive reading of the zoning regulations, if left unaided by an authoritative administrative construction, would be to place a host of people in unwitting exposure to charges of violation of the zoning law.

Fifteen copies of this letter are enclosed.

By: _____
Stephen Leckar, #281691
Dennis Hart, #935643

Cc Benny Kass, Esq. and Adam Lipton, Esq.