BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

In re: BZA Appeal No. 16679

MOTION TO POSTPONE HEARING ON APPEAL NO. 16679

I.
INTRODUCTION

By Motion dated August 27, 2001, Charles Sisson, the owner of the house that is the subject of the above-referenced Appeal, through counsel, moved the Board to dismiss the subject Appeal as moot. The Appeal involves the challenge of a remedial permit that was issued by the city to allow Mr. Sisson's four-year old addition and garage to remain. The Appeal has followed Mr. Sisson's two-year long variance case concerning the addition (BZA Application No. 16521) and the prior original appeal of the issued permits. The Board has devoted untold hours of hearings and resources to this addition and garage.

In arguing that the Appeal is moot, Mr. Sisson stated that (1) the identical issues which are the subject of the Appeal have recently been decided by the Board in BZA Application No. 16521 with the same parties in interest, (2) any testimony in evidence in the Appeal already has been filed in the record of BZA Application No. 16521, the Zoning Administrator has addressed and defended his position, and the Board has decided those issues, and (3) all parties have had their "day in court." Consideration of this Appeal will be duplicative and a waste of the Board's resources.

At a public meeting on October 2, 2001, the Board requested that the Appellant, the Spring Valley Wesley Heights Citizens' Association, respond to the mootness question raised by Mr. Sisson. Further, the Board offered Mr. Sisson the opportunity to provide further support for his

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position. Counsel for the Appellant filed a letter on November 6, 2001, arguing that the matter is not moot and requires yet another time-consuming and contentious hearing. The Appellant offered no new arguments. If the Appeal is scheduled for a hearing, the Board will be forced to revisit long-resolved issues. While Mr. Sisson stands by all of his originally stated arguments regarding mootness, there is now an immediate compelling reason to postpone the hearing in the event that the Board determines the Appeal is not moot.

II.
REQUEST FOR POSTPONEMENT

Since the Board's meeting on October 2, 2001, there has been an extremely significant development concerning this property. On November 9, 2001, the D.C. Court of Appeals heard oral argument from Mr. Sisson's counsel regarding his challenge of the Board's original decision to grant the appeal of the building permits that were associated with the construction of his addition. In considering this Appeal, the Court had the benefit of oral argument from only Mr. Sisson's counsel since counsel for Mrs. Crary, the longstanding opponent of Mr. Sisson's addition, decided not to defend the Board's position in the Appeal. In addition, the Office of the Corporation Counsel made a decision that was most unusual. While that office, as counsel for the Board, typically defends the Board's actions, it decided to refrain from such defense given Mrs. Crary's decision to refrain from exercising her rights. The Office of Corporation Counsel, in a pleading filed on May 22, 2001, stated that it was not in the interest of that office to participate in a neighbor dispute:

> Intervenor (Mrs. Crary) is not entitled to taxpayer-subsidized counsel to forward her private interest in blocking her neighbor's home improvement efforts -- particularly where her own counsel, who presented the case below is well-positioned to brief the arguments in support of the BZA decision."

Further, the Office of the Corporation Counsel stated that it should not submit a brief arguing for affirmance of a BZA decision vacating the permits since the District is estopped from

seeking reversal of its permits upon which a private party has relied, incurring substantial economic consequences.

Oral argument was completed on November 9. If the three-judge panel decides in Mr. Sisson's favor, the Appeal No. 16679 that is now pending will be moot in its entirety. There is no benefit to the Board devoting considerable time and resources to a hearing on this Appeal when the D.C. Court of Appeals will render a decision that may moot the Appeal. Based on the past experience of this Board concerning any and all matters relating to this property, the hearing will be extremely lengthy. It should be postponed given the possibility that it will be rendered unnecessary.

Mr. Sisson stands by the earlier Motion to Dismiss the subject Appeal as moot. However, in the event that the Board decides that the Appeal is not moot, Mr. Sisson strongly urges that the Board postpone the scheduling of a hearing on this Appeal until the Court of Appeals has rendered its decision in the pending case. In the event of a ruling in Mr. Sisson's favor, this entire matter will be brought to closure. The subject Appeal will be moot and no further appeals can be entertained in connection with the permits associated with the expansion of the house. Even if Mr. Sisson does not prevail in the Appeal, the Court's decision may provide guidance to the Board that will be helpful in the consideration of this Appeal.

III.
CONCLUSION

For the foregoing reasons, we strongly urge the Board to dismiss the Appeal as moot. In the event that the Board decides that the Appeal is not moot, we strongly urge the postponement of the Board's hearing until the Court of Appeals renders its decision. The Court's decision may render the Appeal moot. Further, the requested postponement will not prejudice any party. Mr. Sisson's long-standing opponent made no effort to defend her position in court, but rather chose to pursue yet another administrative challenge as she continues her four-year effort to oppose this addition.

The Board should not devote more resources to this matter given the potential for final, dispositive action from the Court.

Respectfully submitted,

SHAW PITTMAN, LLP

Maureen E. Dwyer

Allison C. Prince 12/17/21

Attorneys for Owner Charles Sisson

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Postpone Hearing on Appeal No. 16679 was hand delivered this 17th day of December, 2001 to:

John Patrick Brown, Esq.
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(Counsel for Mildred Crary and
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Mr. Toye Bello
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941 North Capitol Street, NE
Second Floor
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Allison C. Prince

Document #: 1193405 v.1

Government of the District of Columbia
BOARD OF ZONING ADJUSTMENT

MEMORANDUM

To: To File

From: Sheri M. Pruitt,
Secretariat to the Board of Zoning Adjustment

Date: 12-7-01

Re: **BZA APPLICATION No. 16679 Spring Valley-Wesley Heights Citizens** of **Association**

At the October 2, 2001 meeting, the Board established the following briefing schedule:

November 6, 2001 Opening Brief for Spring Valley-Wesley Height Citizens Association

December 4, 2001 Response from Zoning Administrator, ANC and Intervener Mr. Sission

December 18, 2001 Rebuttal by Spring Valley-Wesley Height Citizens Association

January 15, 2002 Hearing

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