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April 2, 2002

Geoffrey Griffis
Chair
Board of Zoning Adjustment
441 Fourth Street, N.W.
Suite 210-S
Washington, DC 20001

D.C. OFFICE OF ZONING
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Re: BZA Application No. 16827

Mr. Chairman and Members of the Board:

On behalf of the American Society of Microbiology, we are requesting a rehearing on the above-referenced application or additional time to respond to the recent submissions of the applicant and the Office of Planning in the event that the Board does not take action to disapprove the above-referenced application at today's BZA meeting. The procedures utilized thus far in this case, including an unadvertised addition of a third parking variance request by the Applicant, do not meet the requirements of the law covering BZA procedures and act to seriously prejudice the rights of ASM to meaningfully participate in the case and protect its legitimate property interests.

A Rehearing is Required by Law in the Event that the Board Intends to Approve Application No. 16827

The rules governing BZA procedures require that a public hearing be held on all applications filed with the Board (§§ 3117.1). The purpose of the hearing process is to provide an opportunity for full public review of the merits of an application and cross-examination of all witnesses and government representatives involved in the case. In this case, a public hearing was held on January 29, 2002, but at that time, the Applicant submitted very little information on the project, and the Applicant clearly did not address the variance standards or make a legally adequate case for variance relief although the applicant is an attorney. Rather, the facts surrounding the applicant's case and the justifications propounded for the requested variances have come into the record in a piecemeal fashion – with the majority of the materials submitted after the public hearing. The Board has bent over backwards giving the Applicant additional opportunities subsequent to the hearing to make her case. The Applicant was given an opportunity to supplement the record prior to a scheduled decision on the case at the March 5th meeting of the Board. The applicant submitted a supplementary statement on February 19th.

BZA
Case No. 16827
Exhibit No. 43

Board of Zoning Adjustment
District of Columbia
CASE NO.16827
EXHIBIT NO.43

However, at the March 5th meeting, for reasons which are unclear to counsel, the Board gave the applicant a second opportunity to supplement the record. And, in fact, a second supplementary filing, consisting of over 70 pages, was made on March 21st. Apparently, on the basis of this supplementary filing, the Office of Planning reversed its position with respect to one of the variances and it filed a supplementary report late in the afternoon on the event of the holiday weekend on March 29th.

All of these post-hearing submissions which are not merely supplementary in nature but provide for the first time, the alleged facts and justifications upon which the Applicant seeks to rely for the variance relief requested, should have been submitted prior to the public hearing in the case so that interested, affected parties, can respond and make their responses known to the Board within the public hearing process, as required by the BZA rules.

In the Alternative, ASM Requests Additional Time to Respond in Writing to the Recent Submissions by the Applicant and ASM

ASM was not represented by counsel at the January public hearing and did not request party status, although it certainly meets the requirements to qualify for such status. Counsel was retained afterwards to review the record of the case and submit a post-hearing statement.

Following the submission of that statement, counsel has done everything possible to stay abreast of the progress of this case which has been highly irregular. Counsel sent a clerk to check the BZA file on the case on March 22nd following the Applicant's deadline for the most recent submission. No such submission was in the file. Finally, after a number of phone calls to staff on March 28th, Mr. Nero was able to verify that a submission has been received and counsel obtained a copy of that submission which contains a number of misstatements about ASM's building. In addition, counsel has spoken on several occasions with Mr. Jackson of OP and obtained reassurances that OP did not plan to make any additional submissions in the case. It was only late yesterday afternoon, when counsel was meeting with OP on another matter, that we learned that OP had indeed made another submission and changed its submission.

In view of the above circumstances, counsel requests, in the alternative, that additional time be provided for ASM to respond to the recent submissions of the applicant and OP.

Sincerely,



Cynthia A. Giordano