ShawPittman LLP

JOHN T. EPTING
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January 26, 2004

By Facsimile

Mr. Geoffrey Griffis, Chair
Board of Zoning Adjustment
441 4th Street, NW
Suite 210 South
Washington, D.C. 20001

Re: Intervenor's Opposition to Request for Postponement
Appeal No. 17054

Dear Mr. Griffis and Members of the Board:

On behalf of Brian Logan, the owner of the property located at 3101 Chain Bridge Road, N.W. (Lot 30, Square 1427) (the "Subject Property"), we have received a request by Counsel for Appellants for a postponement of the January 27, 2004 hearing. We did not consent to that Request and after review of it, we respectfully oppose it for the reasons listed below.

First, as the Board is aware, this hearing has been scheduled since October 21, 2003. Appellants have had (or should have had) adequate time to prepare.

Second, the fact that Intevernor voluntarily filed a statement prior to the hearing rather than at the hearing itself provides no basis for a postponement. There is no prehearing time requirement for Intevernor to make a filing -- unlike Appellants who under 3112.10 are required to file no later than fourteen (14) days before the date of the hearing. That prehearing statement is to contain "...any additional statements, information, briefs, reports (including reports or statements of expert and other witnesses), plans, or other materials that the appellant may wish to offer into evidence at the hearing." Appellants chose not to file such a required prehearing statement. After dutifully checking the records of the Office of Zoning for such a submission, Intevernor justifiably assumed that Appellant had already filed all of its materials before the Board in its original submission and prepared for the hearing accordingly. In terms of prejudice, the fact that Appellants are required to file expert and other materials ahead of time but did not do so, surely can provide no basis for additional time to prepare witnesses and respond to Intervenor's statement which was filed for the convenience of the Board (and Appellants prior to the hearing). Having failed to follow the Board's rules, even where it

BZA
Case No. 17054
Exhibit No. 39

Board of Zoning Adjustment
District of Columbia
CASE NO. 17054
EXHIBIT NO. 39

appears that expert evidence is intended to be offered, Appellant cannot justifiably request a postponement.

For these reasons, we ask that the Board proceed with the regularly scheduled hearing at 1:30 pm on January 27th and we will be prepare to address the Request at the start of the Board's afternoon hearing session.

Sincerely,

John T. Epting

Ashleigh D. Horne

cc: Benjamin G. Chew, Esq.
Andrew Zimmitti, Esq.
Patton, Boggs LLP
Counsel for Appellants

Document # 1376362 v 1

ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

DATE: January 26, 2004

FROM: John Epting
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TOTAL PAGES (INCLUDING COVER): 1

Please deliver to the following people in your organization

NAME	ORGANIZATION	PHONE #	FAX #
Geoffrey Griffis	Board of Zoning Adjustment		(202) 727-6072
Benjamin Chew Andrew Zimmitti	Patton, Boggs LLP	(202) 457-6000	(202) 457-6315

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Mr. Geoffrey Griffis, Chair
Board of Zoning Adjustment
441 4th Street, NW
Suite 210 South
Washington, D.C. 20001

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appears that expert evidence is intended to be offered, Appellant cannot justifiably request a postponement.

For these reasons, we ask that the Board proceed with the regularly scheduled hearing at 1:30 pm on January 27th and we will be prepare to address the Request at the start of the Board's afternoon hearing session.

Sincerely,

John T. Epting

Ashleigh D. Horne

cc: Benjamin G. Chew, Esq.
Andrew Zimmitti, Esq.
Patton, Boggs LLP
Counsel for Appellants

Document #: 1376362 v.1

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Counsel for Appellants

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