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October 2, 2007

VIA HAND-DELIVERY

Ms. Ruthanne G. Miller
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W.
Room 200
Washington, D.C. 20001

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Re: BZA Appeal 17657

Dear Chairperson Miller:

This firm is counsel for the Appellant, 1231 Morse Street, Inc., in this Appeal.

The Appellant respectfully moves the Board to summarily deny the Department of Consumer and Regulatory Affairs' ("DCRA") Motion to Dismiss which was hand-delivered to the undersigned at 5:49 pm on the eve of the hearing (Monday, October 1, 2007) and apparently has not been filed with the Board this morning on the day of the hearing.

Substantively, DCRA's Motion is nonsensical. More importantly, it is procedurally defective, inexcusably late, and prejudicial to the Board and the Appellant. This last-minute dispositive motion violates the Administrative Procedures Act ("APA") which the Board is obligated to follow. 11 DCMR § 3102.1. The APA provides for reasonable notice in contested cases. In similar circumstances, the APA prohibits filing a dispositive Motion "fewer than fourteen (14) days prior to a [hearing]." 1 DCMR § 2812.4 (Office of Administrative Hearing Rules). In sharp contrast, Appellant filed its Prehearing Statement and Motion for Summary Judgment fourteen (14) days before the hearing in accordance with the Board's Rules and the APA.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17657
EXHIBIT NO. 20

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Board of Zoning Adjustment
District of Columbia
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Ms. Ruthanne G. Miller

October 2, 2007

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As we all learned in BZA Appeal No. 17591 of MLW, LLC, DCRA's day of the hearing filing is objectionable to the Board and Appellant and disruptive to orderly and fair proceedings. To avoid a repeat of the MLW case, this firm specifically requested DCRA's agreement to file any prehearing submission no later than seven (7) days prior to the hearing which is in keeping with D.C. Government's filing requirements in BZA applications, entirely reasonable, and respectful of the Board and Appellant's interest in not being surprised by a voluminous last-minute filing at the hearing. Unfortunately, DCRA refused to agree to Appellant's request and insisted on filing its prehearing submission "on the day of the hearing." See Attached September 6, 2007 e-mail from Doris Parker-Woolridge, Esquire to the undersigned.

The Board has the explicit and inherent right and responsibility to regulate the course of these proceedings to ensure orderliness and fundamental fairness. 11 DCMR § 3117. DCRA's Motion to Dismiss was served on the eve of the hearing in violation of the Board's Rules and the APA. It can not be disputed that DCRA's practice of last minute or on the date of the hearing filings is prejudicial to the timely and orderly preparation for and conduct of the hearing by both the Board and Appellant. Other than to gain improper advantage over the Appellant and/or to delay these proceedings, there is no reasonable or compelling reason to justify DCRA's actions. This Appeal was filed on April 20, 2007 and arises out of the building permit issued in September 2005, a demolition permit issued in February 2006, the first stop work order in February 2006, three additional stop work orders in April and May, 2007, and most recently a Notice to Revoke Permits in July 2007. This matter dates back more than two (2) years and the legal disputes have been ongoing for at least nineteen (19) months. There can exist no reasonable basis or good cause for DCRA's failure to act in a timely manner.

Thank you for your cooperation in this matter.

Very truly yours,

GREENSTEIN, DELORME & LUCHS, P.C.



John Patrick Brown, Jr.

Enclosure

JPB:prm

Electronically, Except as Noted

cc: The Honorable Neil O. Albert
Jill Stern, Esquire
Doris Parker-Woolridge, Esquire
Mr. William Shelton, Chair, ANC 5B (By Mail)
Ms. Elise Bernard, ANC 5B08 (By Mail)

John Patrick Brown Jr.

From: Parker-Woolridge, Doris (DCRA) [Doris.Parker-Woolridge@dc.gov]
Sent: Thursday, September 06, 2007 5:14 PM
To: John Patrick Brown Jr.
Cc: Stern, Jill (DCRA)
Subject: FW: BZA Appeal 17657 for Morse Street

Pat,

DCRA will not consent to filing its prehearing submission on Sept. 27 rather than on the day of the hearing.

Doris A. Parker-Woolridge, Esq.

Office of the General Counsel
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From: Stern, Jill (DCRA)
Sent: Thursday, September 06, 2007 5:07 PM
To: John Patrick Brown Jr.; Stern, Jill (DCRA)
Cc: Parker-Woolridge, Doris (DCRA)
Subject: RE: BZA Appeal 17657 for Morse Street

I prefer if you coordinate with Doris on this since she is taking the lead.

Jill A. Stern
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From: John Patrick Brown Jr. [mailto:JPB@gdllaw.com]
Sent: Thursday, September 06, 2007 5:04 PM
To: Stern, Jill (DCRA)
Subject: RE: BZA Appeal 17657 for Morse Street

Okay, but I am sorry to hear that. Our prehearing submission is due on SEpt. 18. Will DCRA agree to make its prehearing submission on SEpt. 27 rather than on the day of the hearing? 7 days before the hearing is customary practice before the BZA. Thanks, Pat

John Patrick Brown, Jr., Esq.
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administrator@gdllaw.com

THANK YOU.

From: Stern, Jill (DCRA) [mailto:Jill.Stern@dc.gov]
Sent: Thursday, September 06, 2007 4:48 PM
To: John Patrick Brown Jr.
Subject: RE: BZA Appeal 17657 for Morse Street

We are moving forward with the case. I did not intend to suggest otherwise.

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