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**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of 1231 Morse Street, Inc.

BZA Appeal No. 17657

ANC 5B

Public Hearing: October 30, 2007

**APPELLANT'S OPPOSITION TO DCRA'S
MOTION TO DISQUALIFY AND STRIKE TESTIMONY
OF MR. OLUTOYE BELLO**

The Appellant, 1231 Morse Street, Inc., by and through undersigned counsel, respectfully submits this Opposition to DCRA's Motion to Disqualify and Strike Testimony of Mr. Olutoye Bello as an expert witness in this Appeal.

Once again, at the eleventh hour, DCRA has filed another untimely pleading.¹ This time, DCRA has challenged the Appellant's expert zoning witness, Mr. Bello, claiming that his unrelated and routine approval of a Subdivision Plat for the property, Exhibit A, which approval occurred prior to any events at issue in this Appeal somehow forms the basis for his disqualification. As more fully set forth below, DCRA's Motion is untimely, contradicts its enthusiastic stipulation to Mr. Bello as an expert witness, and most importantly, is factually and legally incorrect.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO.

17657

EXHIBIT NO.

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¹ The Appellant also objects to DCRA's first Supplemental Witness and Evidence List (October 12, 2007) and second Supplemental Witness and Evidence List (October 26, 2007) as untimely, improper and prejudicial to the Appellant and the orderly course of these proceedings.

Factual Background

The following chronology of events is undisputed and dispositive in this matter:

- November 23, 2004:** Appellant submitted application to D.C. Surveyor to subdivide (combine) A&T lots 810 and 812 into a Single Record Lot.
- February 23, 2005:** Mr. Bello, as then Zoning Administrator, approved Subdivision Plat.
- March 3, 2005:** Subdivision Plat creating Record Lot 130 recorded in Office of D.C. Surveyor.
- April 12, 2005:** Appellant filed application for Original Permit.
- May 15, 2005:** Mr. Bello's last day as Zoning Administrator.
- July 16, 2005:** Zoning approved Original Permit application by Ms. Xuan Mac, Zoning Technician.
- September 6, 2005:** Original Permit issued by DCRA.
- December 15, 2006:** Appellant's counsel and Mr. Bello meet with DCRA, including Mr. Lennox Douglass and Doris Parker-Woolridge, Esquire to discuss pending Stop Work Order and submission of Revised Permit Application.
- March 6, 2007:** Zoning Letter from Mr. Crews denying Revised Permit Application.
- April 20, 2007:** Appellant filed this Appeal and listed Mr. Bello as zoning expert witness.
- July 19, 2007:** Notice to Revoke Original Permit and Emergency Demolition Permit issued by Mr. Lennox Douglass.
- September 18, 2007:** Appellant filed Pre-hearing Statement and Motion for Summary Judgment, including sworn Affidavit of Mr. Bello.
- October 2, 2007:** Mr. Bello testified at BZA hearing as Zoning expert witness. DCRA voluntarily and enthusiastically stipulated to Mr. Bello as an expert witness in Zoning.

Argument

I. DCRA's Motion Is "Very Untimely"²

In what has become its standard practice, DCRA has waited until too late to file this Motion. Mr. Bello's participation in this case should have come as no surprise to DCRA, but it waited until Friday, October 26, 2007 to file this Motion. Mr. Bello has been involved in this matter as a private consultant since prior to December 15, 2006, when DCRA met with him and the undersigned. More directly, DCRA was put on notice at least three (3) times over a five and a half (5½) month period that Mr. Bello would be offered as an expert witness, including: 1) by the April 20, 2007 Appeal filing; 2) by the September 18, 2007 Pre-hearing Statement and Motion for Summary Judgment, including his sworn affidavit; and 3) by Mr. Bello's sworn testimony at the October 2, 2007 public hearing. At no time did DCRA object to Mr. Bello's role as an expert witness in this matter.

II. DCRA Enthusiastically Embraced Mr. Bello As An Expert Witness

After hearing Mr. Bello's testimony at the October 2, 2007 public hearing, DCRA wants to change its mind about his qualifications as an expert witness in this case. At the October 2nd hearing, DCRA had no such reservations about Mr. Bello and was unequivocal and enthusiastic in its support.

MR. GREEN: . . . [y]ou know, if you want me to, I'll stipulate. I know Mr. Bello. He's an expert.

CHAIRPERSON MILLER: All right. DCRA has no objection; is that correct?

² CHAIRPERSON MILLER: "DCRA filed a motion to dismiss. The Board just got it this morning, hasn't had a chance to read it very much. It is a very untimely way in which to file a pleading. It's not enough time for us. It's not enough time for the opposing party to have to respond." (October 2, 2007) BZA Hearing Transcript ("October 2 Transcript"), page 129.

MR. GREEN: Absolutely.

MR. BROWN: [Speaking of Mr. Bello's qualifications as an expert in zoning]. . . you know, as experienced and sophisticated as anybody in the public or private sector on zoning matters and leave it at that.

And I don't think anybody objects to that characterization.

CHAIRPERSON

MILLER: Anybody object? Okay.

MR. GREEN: I certainly don't object.

(October 2 Transcript, pages 140-142.)

MR. GREEN: . . . [M]y question to you as an expert, and we all agree that you are. . .

(October 2 Transcript, page 290.)

It is undisputed that Mr. Bello's expert testimony was critical, if not dispositive, to the Board's understanding and granting of the Appeals of *Endalkachew Tesfaye*, BZA Appeal No. 17648-A and *MLW, LLC*, BZA Appeal No. 17591. DCRA's Motion, does not question Mr. Bello's expertise, but instead makes an unwarranted attack on his personal integrity.

III. Mr. Bello's Expert Testimony is Not Related to the Subdivision Plat

DCRA incorrectly claims that Mr. Bello's February 23, 2005 approval of a Subdivision Plat for the property is substantially related to his role as an expert witness in this Appeal. Both in time and substance, Mr. Bello's role as an expert witness is separate and unrelated to his approval of the Subdivision Plat before he left the Zoning Administrator's Office almost three (3) years ago.

The chronology of events speaks for itself. The Subdivision Plat was approved by Mr. Bello on February 23, 2005 and recorded by the D.C. Surveyor on March 6, 2005. The Subdivision process was completed prior to and unrelated to the Original Building Permit

Application which was subsequently filed on April 12, 2005. Mr. Bello left the Zoning Administrator's Office on May 15, 2005 and had no knowledge and did not play any role as the Zoning Administrator in the review and approval of the Original Building Permit Application.

The Original Building Permit Application was reviewed and approved by Ms. Xuan Mac, Zoning Technician, on July 16, 2005 – more than two (2) months after Mr. Bello left the Zoning Administrator's Office. The Original Building Permit was issued on September 6, 2005 – almost four (4) months after Mr. Bello's departure. The March 6, 2007 Zoning Letter from Mr. Crews occurred almost two (2) years after Mr. Bello's departure and the Notice to Revoke Permits occurred twenty-six (26) months after Mr. Bello's departure. Obviously, Mr. Bello, as the Zoning Administrator, played no role in the events which are the subject of this Appeal.

Substantively, DCRA has not offered or established any relationship between the Subdivision Plat and the subsequent actions which are the subject matter of this Appeal. Further, DCRA repeatedly references "confidential" information obtained by Mr. Bello during the Subdivision approval process, but fails to identify any such information. Significantly, the Subdivision approval process is a limited and mechanical zoning function which involves only the identification of the applicable zoning district and whether the proposed subdivided lot complies with the minimum area requirements (lot area, lot width, yards) based on the existing improvements. The Subdivision process does not involve and is unrelated to any subsequent building permits that may be sought for the property involved.

In this Appeal, the approved Subdivision is not at issue and has not been disputed or challenged by either party. Specifically, neither party has offered any evidence related to the Subdivision. Mr. Bello's Affidavit and testimony do not include any reference to or reliance on the Subdivision. (October 2 Transcript, pages 95-370.) In fact, the Subdivision is an established

fact and entirely irrelevant to the subject matter of this Appeal which involves events that occurred subsequently.

For the foregoing reasons, DCRA's Motion must be DENIED.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

A handwritten signature in black ink, appearing to read 'J.P. Brown, Jr.', is written over the firm name.

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Stephanie A. Baldwin, # 463370
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Suite 900
Washington, D.C. 20036
(202) 452-1400

Counsel for Appellant – 1231 Morse Street

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Appellant's Opposition to DCRA's Motion to Disqualify and Strike Testimony of Mr. Olutoye Bello was served by first-class mail and other means as noted, this 29th day of October, 2007, upon the following:

The Honorable Neil O. Albert (Electronic Mail)
Deputy Mayor for Economic Development
The John A. Wilson Building
1350 Pennsylvania Ave., N.W.
Room 317
Washington, D.C. 20004

Jill Stern, Esq. (Also, Electronic Mail and By Hand)
General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Room 9400
Washington, D.C. 20002

Doris Parker-Woolridge, Esq. (Also, Electronic Mail and By Hand)
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Room 9400
Washington, D.C. 20002

Mr. William Shelton
Chairperson
Advisory Neighborhood Commission 5B01
1437 Montana Ave., N.E.
Washington, DC 20018

Ms. Elise Bernard
Advisory Neighborhood Commission 5B08
1220 Florida Ave., N.E.
Washington, DC 20002



John Patrick Brown, Jr.

EXHIBIT A

The undersigned certify that they are owners in fee simple of the property to be subdivided and are in peaceful occupation thereof; that there are no pending suits or actions that affect title to the property; that parties to any deeds of trust have hereto indicated their assent; and that there are no interests or claims affecting title to the property other than such deeds of trust. The undersigned hereby subdivides part of Lots 46 and 49 in "Trinidad, Blk. 1" (Book Co. 6 Page 120 and Lot 112 in "Trinidad, Blk. 1" (Book Co. 22 Page 41) into one Lot and Square 4069 and requests that this subdivision be recorded in the Office of the Surveyor of the District of Columbia.

WITNESSES

OWNERS

1231 MORSE STREET, INC.

Hassan Akinkunle

Rita Coker

TAIWO DEMUREN, PRESIDENT

Hassan Akinkunle

Rita Coker

Folashade Demuren

FOLASHADE DEMUREN, VICE-PRESIDENT

OFFICE OF TAX AND REVENUE

2/16/ 2005

I certify that the following statements relating to this subdivision are correct:

1 Ownership agrees with our records: 2/16/05 AS

2 Real estate taxes are paid to: 3/31/05 AS

3 There are no unpaid assessments: 2/16/05 AS

John May O. Shat-Duro Jr.
Chief Assessor, Assessment Division

I acknowledge for the owners that this is not a tax certificate as intended by D.C. Code Section 47-405.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

2/23, 2005

I certify that this subdivision complies with all applicable provisions of DCMR11, Zoning Regulation of the District of Columbia.

Zoning District: R-4

INTERVIEW
Zoning Administrator

Feb. 10, 2005

Arcton
HISTORIC PRESERVATION

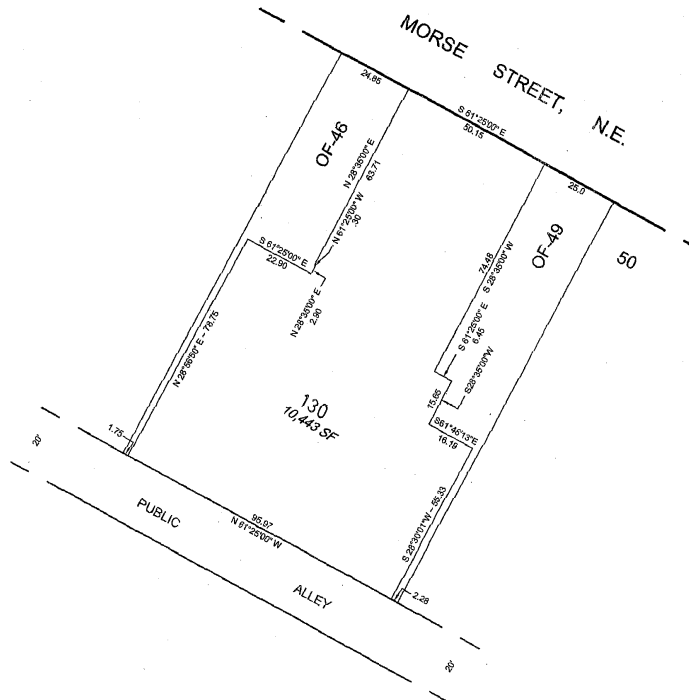
OFFICE OF THE SURVEYOR

March 3, 2005

I certify that this plat is correct and is hereby recorded.

Robert L. Drury
Surveyor, D.C.

SUBDIVISION SQUARE 4069



Subscribed and sworn before me this 11th day of February, 2005

Kosh Akendoh
Notary Public

September 2, 2008
My Commission Expires

NUMBER OF TRUSTS: 0

ASSENT BY TRUSTEES:

SURVEYOR'S OFFICE, D.C.

Made for: TAIWO DEMUREN

Drawn by: L.E.S. Checked by: RZ AS

Record and computations by: B. MYERS

Recorded at: 1:40 PM MARCH 3, 2005 in 4

Recorded in Book 199 Page 45 S.O. 16906

Scale: 1 inch = 20 feet

File No. 04-14329