

February 1, 2016

Via IZIS

Marnique Y. Heath, Chairman
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: BZA Appeal No. 19067 of ANC 4C; 1117 Allison Street, NW; Opposition to the Board's Admission of Appellant's January 28th Filing (BZA Exhibit 80).

Dear Chairperson Heath and Members of the Board:

The Property Owner opposes the admission of the Appellant's and Neighbor-Intervenor's Response to DCRA's Motion to Strike, which was filed with the Board on January 29, 2016.

No Deadline for Submission.

Appellant and Intervenor (for convenience, collectively referred to herein as the "Appellants"), state in their January 29 submission that "[t]he Board established a deadline of January 26, 2016, for the responses [of DCRA and Property Owner]". In the first place, there is nothing about a late filing that gives an opponent the right to file additional information or argument or response. But regardless of that logic, we have watched the video of the January decision meeting three times and are unable to find any evidence whatsoever that the Board established any deadline at all, let alone the specific deadline claimed by the Appellants. The only time criteria involved a 7-day *minimum* period to allow DCRA and the Property Owner to respond to the Appellant's late submissions (Exhibits 70 and 71).

The Record is Closed.

What the Board *did* establish on January 19 was that the record was indeed closed for all submissions but for DCRA's and the Property Owner's Response to the Appellant's late filings (Exhibits 70 and 71). As such, Appellant's January 29 submission is out of order and should not be admitted.

Councilmember Mendelson's Submission.

Councilmember Mendelson's letter likewise should be rejected. The record is closed. In addition, Councilmember Mendelson's letter mentions opposition to "pop-ups", which this project obviously is not, begging the question whether or not Ms. Abrams showed him the correct plans.

Property Owner's Intent in Canceling Permit.

The Appellants are questioning the property owner's intent in canceling the December Permit. His intent in applying for the December Permit was to improve the project over what was designed by his

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predecessor in ownership. His intent in canceling the December Permit is to avoid further hassle and delay caused by Ms. Abrams, who apparently opposed the December Permit, just as now she instead opposes its cancellation.

Substance of the January 29 Submission.

The Appellants now demand that the Property Owner not even be able to cancel his own permit, completely misinterpreting the legal concept of judicial estoppel to make this argument. The Property Owner is not changing his legal position. He is canceling a permit for a small revision that will now go away, leaving the same project that has been in place since first approved in May, 2015; which is the same project reviewed by the Board in this Appeal and the same project of which the Appellant's own expert has found a lot occupancy under 60%.

For the above reasons, among others, the Appellants' January 29 submission should be rejected.

Sincerely,



Martin P. Sullivan

cc: ANC 4C
Maximilian Tondro
Lyn Abrams