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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; Response to Appellants' February 2 Submission.

Dear Chairperson Heath and Members of the Board:

The Appellants have filed yet another late submission after closing of the record. The property owner should have the right to respond.

The Appellants claim that they submitted the December Permit only to show the intent of the then-property owner that the then-property owner wanted to keep the front porch. The *intent* of the property owner - or of anybody else for that matter - is not before the Board. What *is* before the Board is whether or not this project complies with the Zoning Regulations. More specifically, the question before this Board is whether or not the Appellants have proven that the Zoning Administrator erred; and more specifically, and if so, what provision of the Zoning Regulations has been violated.

The Zoning Administrator has testified that the plans approved upon issuance of the original permit showed a footprint under the lot occupancy maximum of 60%. The Appellants' very own expert testified in writing in his report (which the Appellants have submitted twice for good measure) that those plans, as of May, 2015, showed a lot occupancy footprint of 59.82%, with a discrepancy in the plat that he claimed showed a higher lot occupancy at the time.

In an effort to avoid confusion, the Zoning Administrator directed the then-property owner to clarify the building permit plans for use before the Board. Following such clarification, the Appellants' expert opined that the project safely met both lot occupancy and pervious surface requirements.

What this means is that not only have the Appellants failed to cite an error by the Zoning Regulations, they have knowingly pursued a meritless appeal. The property owner *does* still have a right to use and develop his property in accordance with the law. The property owner also has the right to clarify – and yes, *amend* – its plans provided *the amendment* complies with the Zoning Regulations in effect on that date (the recent changes to R-4 regulations did not change the maximum permitted lot occupancy or the pervious surface minimums).

The Appellants' argument, to the extent we understand it, seems to be (1) only *their* interpretation of the original building permit plans count (even though their own expert noted that portions of the plans showed a completely compliant building in May, 2015); and (2) a property owner is prohibited from ever

amending or clarifying its plans (a precedent which would revoke the large majority of permits issued and send the industry into chaos). Ms. Abrams herself, if intent be relevant, wants this interpretation because this case is about her opposition to having construction – and a conversion - next door to her. She wants the new R-4 Regulations applied retroactively against *her* neighbor, although even with two units the owner could *still* build to 60% lot occupancy – and could even add a third story! This Appeal is not about an alleged 1.8% lot occupancy overage which even Ms. Abrams now acknowledges is no longer present.[1]

We urge the Board to no longer accept the Appellants' late filings and empty claims. We urge the Board to find that the Appellants' have not shown any error by the Zoning Administrator.

Sincerely,

Martin P. Sullivan

cc: ANC 4C
Maximilian Tondro
Lyn Abrams

[1] A point missing up until now is that Ms. Abrams does not even have standing because as a matter of law, she cannot be aggrieved for purposes of this Appeal due to a lot occupancy which even she admits is clearly under 60%. We would submit she was not aggrieved by a 1.8% overage, but even she is not claiming this overage anymore.