

January 16, 2018

Meridith H. Moldenhauer

Direct Phone 202-747-0763
Direct Fax 202-683-9389
mmoldenhauer@cozen.com

Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

**RE: BZA Case No. 19573
Intervenors' Response to Written Testimony of Commissioner Sharon Farmer**

Chairperson Hill and Honorable Members of the Board:

On behalf of Intervenors Graham Smith and Alexis Diao (the "Intervenors"), please consider the following a response to the written testimony of Commissioner Sharon Farmer (BZA Ex. No. 50) as permitted by this Board's memorandum dated December 21, 2017 (BZA Ex. No. 49).

First and foremost, the written testimony submitted by Commissioner Farmer does not constitute a formal resolution of Advisory Neighborhood Commissioner 1A ("ANC 1A"), and such testimony is not entitled to great weight¹ by this Board. To that end, Intervenors have attached a letter from ANC 1A Chairperson Kent Boese. *See **Tab A***. Most importantly, as to this appeal, Chairperson Boese confirms that ANC 1A "does not have an official position nor can a position be presented as representing the Commission." *See **Tab A***. Accordingly, Commissioner Farmer's testimony cannot be considered a formal position taken by ANC 1A; instead, Commissioner Farmer's testimony is her own personal² testimony as the SMD Commissioner.

Even so, Commissioner Farmer's testimony does not change the conclusion that the Zoning Administrator correctly authorized the revised permit that is the subject of this matter. As detailed in Intervenors' Motion to Dismiss (BZA Ex. No. 33) and at the Board's hearing on November 15, 2017, the Zoning Administrator was within his authority pursuant to Subtitle A § 304.10 to authorize a modification to architectural plans that were approved by this Board. The facts also reflect that the ANC 1A was provided notice of the modification request, as well as the Zoning Administrator's decision to grant the request. If the ANC had wished to challenge the

¹ For an ANC's recommendation to be entitled to "great weight" by the Board, the ANC must take formal action at a public meeting and record its recommendation in writing. *See* D.C. Code § 1-309.10(d)(1).

² Notably, prior to being elected an ANC Commissioner, Sharon Farmer submitted a letter in opposition to the Intervenors' original BZA application and testified in opposition at the public hearing on that application. *See* BZA Case No. 19387, Ex. No. 64; *see* BZA Case No. 19387, Hearing Transcript 12/14/16, pgs. 95-97.

LEGAL\34061764\1

Zoning Administrator's decision, it had notice of that decision and opportunity to appeal at that time.

Further, contrary to Commissioner Farmer's assertion, "loss of privacy" is not a factor under Subtitle A § 304.10. Nonetheless, during the November 15th hearing, Intervenors entered evidence in the record that Appellant Makenta has no expectation of privacy based on the location of existing windows; thus, no "loss" of privacy is occurring.

Therefore, the Intervenors respectfully request that the Board dismiss this appeal. We look forward to the Board's decision meeting on January 17, 2017, and we thank you for your attention to this matter.

Sincerely,

Cozen O'Connor

A handwritten signature in blue ink, appearing to read "Meridith Moldenhauer", is written over a horizontal line.

By: Meridith Moldenhauer

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2017, a copy of the foregoing letter was served, via electronic mail, on the following:

District of Columbia Department of
Consumer and Regulatory Affairs
c/o Maximilian Tondro, Assistant General Counsel
1100 4th Street, SW, Ste. 5266
Washington, DC 20024
Maximilian.Tondro@dc.gov
Attorney for Appellee DCRA

Nefretiti Makenta
3618 11th Street, NW
Washington, DC 20010
dcnef@earthlink.net
Appellant

ANC 1A
c/o Kent Boese, Chairperson
1A08@anc.dc.gov

ANC 1A
c/o Sharon Farmer, SMD Commissioner
1A07@anc.dc.gov



Meridith H. Moldenhauer

Tab A



ADVISORY NEIGHBORHOOD COMMISSION 1A

SMD 1A01 – Valerie Baron
SMD 1A04 – Sadaf Mortezaei
SMD 1A07 – Sharon Farmer
SMD 1A10 – Rashida Brown

SMD 1A02 – Vickey A. Wright-Smith
SMD 1A05 – Christine Miller
SMD 1A08 – Kent C. Boese
SMD 1A11 – Dotti Love Wade

SMD 1A03 – Zach Rybarczyk
SMD 1A06 – Vacant
SMD 1A09 – Bobby Holmes
SMD 1A12 – Margaret Hundley

3 January 2018

Graham Smith and Alexis Diao
3616 11th Street, NW
Washington, DC 20010

RE: BZA Cases #19387, #19510, and #19573

Dear Mr. Smith and Ms. Diao,

In response to your request to clarify what role or official position Advisory Neighborhood Commission 1A has taken on the above referenced Board of Zoning Adjustment Cases, I can confirm that ANC1A has only officially taken a position on BZA Case #19387 – the original special exception request. For Case #19387, ANC1A, at a properly noticed meeting and with a quorum present on November 9, 2016, voted with 6 in favor, 3 against, and 0 abstentions to approve the requested zoning relief. This decision should be afforded the “Great Weight” entitled to ANC1A.

ANC1A also received timely notification of BZA cases #19510 and #19573, appeals to the original BZA case filed by Ms. Nefretiti Makenta. While ANC1A is an automatic party to the subsequent appeals filed with the BZA, ANC1A did not consider, vote on, or adopt an official position on either case during a regularly scheduled and properly noticed meeting. Therefore, ANC1A does not have an official position nor can a position be presented as representing the Commission.

Minus action and consideration of appeals #19510 and #19573, the only position from ANC1A that can be given “Great Weight” is the original position taken on November 9, 2016, in which ANC1A supported the special exception.

I hope this provides clarification on the official position of ANC1A on this matter.

With regards,

Kent Boese
Chair, Advisory Neighborhood Commission 1A