

January 23, 2018

VIA IZIS

Chairman Fred Hill
D.C. Board of Zoning Adjustment
441 4th Street NW, Suite 200S
Washington, DC 20001

Re: Case No. 19581 – Applicant’s Opposition to CNDI-LA’s Motion to Reopen Record

Dear Chairman Hill and Members of the Board:

The Applicant in the above-referenced case opposes CNDI-LA’s motion to reopen the record, filed on January 23, 2018. The Board should deny CNDI-LA’s motion because the Board acted properly, its actions did not amount to a public hearing, and no parties were harmed by its actions.

At the January 17, 2018 public meeting, the Board considered this case for a decision in accordance with the applicable laws and regulations. As a regularly-scheduled public meeting, this public meeting was properly noticed in accordance with Subtitle Y § 103.1. The scheduling of this case for a decision at the public meeting on January 17th was announced at the December 20, 2017 public hearing, and this case was advertised on the public meeting agenda more than for days prior in accordance with Subtitle Y § 103.5. The Board conducted the public meeting and deliberated this case in the open, in public, at the advertised time and place, and on the record in accordance with Subtitle Y § 103.2.

The Board deliberated on this case for nearly two hours, and its deliberations about the merits of the case and the satisfaction of the applicable special exception standards was based solely on the record. Twice during its deliberations, the Board called both the Applicant’s representatives and CNDI-LA’s representatives to the table and questioned them. The Board sought clarifying input from both parties only about the conditions and issues related to the conditions that it was deliberating. The Board provided each party with ample time to respond to the Board’s questions, and it made sure that both parties were given generous opportunity to speak about the conditions. In fact, four members of CNDI-LA spoke to the Board during this questioning.

It is common for the Board to call on case representatives during a public meeting to ask clarifying questions in order to facilitate its deliberations. However, asking clarifying questions does not amount to a public hearing. Pursuant to Subtitle Y § 103.9, the purpose of a hearing is to “[receive] evidence and testimony on specific applications...” Nothing in the Zoning Regulations or other applicable laws and regulations prevents the Board from asking clarifying questions and receiving responses to such questions during a public meeting, and doing so does not violate open meeting laws. At the January 17 public meeting, the Board did not seek or receive new evidence and testimony in furtherance of either party’s case or about other aspects of the case; it simply sought to hear from and understand the positions of both parties with respect to the conditions that it was deliberating.

The Board’s questioning of the parties and their responses during the public meeting did not harm or prejudice any party in the case. As stated above, both the Applicant and CNDI-LA were provided ample opportunity to speak in response to the Board’s inquiries and to clearly articulate their positions with respect to the conditions. The Board acted in good faith, and the process was equitable. No member of either party present at the public meeting was denied the opportunity to speak in response to the Board’s questions or in response to the other party. Indeed, in its motion, CNDI-LA does not identify any harm that it or any other party suffered as a result of the Board’s actions. “Ambiguity and confusion” about a public meeting or a public hearing do not mean that either party was denied participation, especially when the Board heard extensively from both parties. Even if Board was uncertain about process or its questioning of the parties was tantamount to a public hearing (which it was not), it does not matter in any event since there was no harm suffered by any party as a result. There is no remedy sought by CNDI-LA or that could be offered by the Board when neither harm nor prejudice resulted to either party.

This case has been thoroughly vetted by many stakeholders, and the Board has received a significant amount of information from both testimony at two public hearings and 160 exhibits in the record. Before it made a decision about the conditions, the Board acted with sincerity only to understand the opinions of both CNDI-LA and the Applicant. Reopening the record would not benefit either CNDI-LA or any other party. Accordingly, the Board should DENY CNDI-LA’s motion and decide this case as scheduled on January 24, 2018.

Sincerely,

/s/
Cary R. Kadlecek

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 23, 2018, copies of the Applicant's opposition to CNDI-LA's motion were delivered via email to the following:

Maxine Brown-Roberts
D.C. Office of Planning
maxine.brownroberts@dc.gov

Aaron Zimmerman
District Department of Transportation
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CNDI-LA
c/o Rami Rihani
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Advisory Neighborhood Commission 4C
c/o Commissioner Maria Barry – SMD 4C02
4C02@anc.dc.gov

_____/s/_____
Cary Kadlecek