Before the District of Columbia
Board of Zoning Adjustment

Application No. 19593

ANSWER OF THE OFFICE OF PLANNING IN OPPOSITION TO MOTION TO REMOVE

The Office of Planning hereby opposes the "Motion to Remove BZA Staff Member from Case Due to Improper Actions" filed on behalf of Mrs. Charlene Patton in the above-referenced matter. The motion asserts that Brandice Elliott, an OP employee, "put herself in a position which caused the appearance of impropriety by engaging in an ex parte nature [sic] of coaching the applicant," and requests, *inter alia*, that Ms. Elliott be removed from this proceeding. The motion is unsupported by facts or law and should be denied.

The assertions on which the motion is based are incorrect or otherwise do not support the extraordinary relief requested. The motion incorrectly identifies Ms. Elliott as a "BZA Staff member." (Motion at 1.) The motion recounts how Mrs. Patton's counsel overheard Ms. Elliott discussing with the applicant the need "to fix the problems" with his application. (Motion at 1.) The motion further recalls that counsel requested to be included in any future conversations between Ms. Elliott and the applicant, a request to which Ms. Elliott "did not consent." (Motion at 1.) Finally, the motion states that counsel is "left wondering what other practice tips or pointers OP has passed along to the applicant." (Motion at 1.)

Simply stated, none of these allegations – much less counsel's speculation – justifies granting the motion.

The Board's Rules of Practice and Procedure proscribe *ex parte* contacts by a Board member, but in no way limit conversations between OP staff and a party. *See* BZA Rule 105.5.[1] As such, Ms. Elliott took no "improper actions," as the motion alleges. (Motion at 1.) The claim that Ms. Elliott's conversations with the applicant create an "appearance of impropriety" similarly misconstrues the role of OP staff in BZA proceedings. Under District law, OP is tasked with reviewing and commenting on zoning cases, not deciding them, and therefore OP staff are free to have conversations with any party. DC ST § 6-623.04.

OP's comments are part of the record on which the Board makes its decision, and a party opposing the application can present evidence and arguments of their own, as well as cross-examine OP staff. That proceedings before the Board may be "adversarial," as the motion emphasizes (at 1), in no way supports the request to be included in every communication an OP staff member may have about an application, but rather underscores that the opponents of an application have ample opportunity to present their concerns to the Board. Nor does a prehearing conversation between an OP staff member and a party prejudice other parties because such a conversation is not part of the record on which the Board bases its

[1] Rule 105.5 states that "[i]n any proceedings before the Board, all members of the Board shall be prohibited from receiving or participating in any ex parte communication relevant to the merits of the proceeding."

decision. Here, any claim of prejudice is particularly unjustified given that counsel for Mrs. Patton acknowledges that she herself "has talked to numerous people in OP." (Motion at 1.)

That counsel for Mrs. Patton has spoken to "numerous people in OP" is unsurprising, as OP staff routinely speak with applicants and application opponents. Through such conversations OP staff members receive input from District residents on all sides of zoning questions. Moreover, OP staff are often able to resolve neighborhood concerns and ultimately to achieve better results than might otherwise obtain. When asked, OP staff provide applicants and application opponents information about how to navigate the ins and outs of a system that many – especially individual homeowners who do not regularly deal with zoning – may find to be complex. Such communications are entirely appropriate, as the purpose of the District's zoning system is to ensure that development of the built environment is consistent with the public interest, not to trip up the unaware.

Granting the extraordinary relief requested in the motion would create a harmful precedent. (Motion at 2.) Removing Ms. Elliott from the case would chill conversations between District officials and residents on all sides of zoning questions. Requiring the applicant to submit all questions to OP or other agencies in writing, with the questions and answers to be served on Mrs. Patton, would be unduly cumbersome and limit the productive back and forth allowed by an informal conversation. The request to examine OP documents related to this case would have the Board assume the role of OP's FOIA officer. And finally, striking OP's

memorandum, which the motion claims to be justified by the alleged failure to address adverse effects on the use or enjoyment of Mrs. Patton's property (Motion at 1), would be a misuse of process to resolve issues that should be addressed at the public hearing on the merits.

For these reasons, OP respectfully submits that the Board should deny the motion without ado.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2018, I caused to be served the foregoing answer by first class mail postage prepaid on the following:

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