



January 30, 2018

Samantha Mazo

Direct Phone 202-747-0768
Direct Fax 202-683-9390
smazo@cozen.com

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

**RE: BZA Case No. 19659
Sheridan-Kalorama Neighborhood Council's Filing in Related Appeal**

Chairperson Hill and Honorable Members of the Board:

On behalf of Party-in-Opposition Sheridan-Kalorama Neighborhood Council ("SKNC"), please find enclosed a filing made by SKNC in a related appeal of the Zoning Administrator. The enclosed filing is SKNC's opposition to a Motion to Dismiss filed by DCRA in BZA Case No. 19719.

Thank you for your attention to this matter and we look forward to presenting to the Board on January 31, 2018.

Sincerely,

COZEN O'CONNOR

BY: SAMANTHA MAZO

LEGAL\34303676\1

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 2018, a copy of the foregoing Cover Letter with attachment was served, via electronic mail, on the following:

District of Columbia Office of Planning
c/o Anne Fothergill, Development Review Specialist
1100 4th Street SW, Suite E650
Washington, DC 20024
anne.fothergill@dc.gov


District Department of Transportation
c/o Anna Chamberlin
55 M Street SE, Ste. 400
Washington, DC 20003
Anna.chamberlin@dc.gov

Advisory Neighborhood Commission 2D
c/o David Bender, Chairperson
2126 Connecticut Avenue NW, Apt. 34
Washington, DC 20008
2D01@anc.dc.gov

Advisory Neighborhood Commission 2D
c/o Ellen Goldstein, SMD Commissioner
2129 Florida Avenue NW, Apt. 501
Washington, DC 20008
2D02@anc.dc.gov

Sheridan-Kalorama Historical Association
c/o Kindy French
2401 Tracey Place, NW
Washington, DC 20008
kindyf@verizon.net

Martin Sullivan
Sullivan & Barros
1990 M Street NW
Washington DC 20036
msullivan@sullivanbarros.com



Samantha Mazo

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**APPEAL OF
SHERIDAN-KALORAMA
NEIGHBORHOOD COUNCIL**

APPEAL NO. 19719

APPELLANT’S OPPOSITION TO DCRA’S MOTION TO DISMISS

The following constitutes Appellant Sheridan-Kalorama Neighborhood Council’s (“Appellant”) opposition to DCRA’s Motion to Dismiss. As detailed below, the Zoning Administrator’s decision that forms the crux of this appeal is an appealable decision under Subtitle Y § 302.1, and the Board should hear the merits of this appeal accordingly.

As a preliminary matter, the Appellant is not opposed to DCRA’s request to continue the hearing on this appeal and the related BZA Case No. 19659 to February 28, 2018.

I. THE JANUARY 18, 2018 DECISION IS AN APPEALABLE DECISION OF THE ZONING ADMINISTRATOR AND, ACCORDINGLY, THIS APPEAL IS RIPE

As outlined in the initial Statement of Appeal, Appellant is challenging the final decision of Matthew LeGrant, Zoning Administrator (the “Zoning Administrator”) made by email dated January 18, 2018 (the “January 18, 2018 Decision”) concerning a threshold determination that dictated the type of zoning relief necessary in BZA Case No. 19659 filed by the Federation of State Medical Boards, Inc. (“FSMB, Inc.”). *See* BZA Ex. No. 3. Pursuant to Subtitle Y § 302.1, an appeal may be filed by a “person aggrieved” that is “affected by an order, requirement, decision, determination, or refusal made by an administrative officer or body” in administering the Zoning Regulations. Contrary to DCRA’s assertion, there is no limitation on the types of appealable actions except the action must concern the “administration” and “enforcement” of the

Zoning Regulations. Therefore, Subtitle Y § 302.1 is clear that any “decision” or “determination” of the Zoning Administrator may be appealed.

In the truest sense of the statutory words, the January 18, 2018 Decision is a “decision” or “determination” by the Zoning Administrator. This conclusion is underscored by the fact that the January 18, 2018 Decision is the Zoning Administrator’s final determination that FSMB, Inc. meets the threshold requirements of Subtitle U §203.1(n). If the Zoning Administrator’s position was that the Board should make these threshold decisions, then there was no need to specifically opine on the threshold criteria in the January 18, 2018 Decision. The Zoning Administrator is the District’s chief interpreter of the Zoning Regulations, and it is likely that his determination would carry significant weight with the Board in adjudicating BZA Case No. 19659. Given the import of January 18, 2018 Decision, as well as the legal and factual issues underlying the Zoning Administrator’s decision, the January 18, 2018 Decision constitutes an appealable “decision” or “determination” pursuant to Subtitle Y § 302.1 and is ripe to be heard by the Board.

Further, the Zoning Administrator asserts that the Appellant would be permitted to appeal a “hypothetical” future building permit application from FSMB, Inc. and, therefore, need not appeal the January 18, 2018 Decision. The possibility of a future permit appeal is too remote and tangential to have any implication on this matter. Importantly, this hypothetical future ability to appeal does nothing to change the fact that the January 18, 2018 Decision remains an appealable decision that Appellant is permitted to appeal under Subtitle Y § 302.1. The threshold requirements of Subtitle U §203.1(n) that are being decided are vital to the Board’s deliberations on BZA Case No. 19659; therefore, the threshold requirements must be decided in conjunction with an adjudication of these cases.

In summation, the January 18, 2018 Decision is an appealable decision that is ripe to be heard by the Board and DCRA's Motion to Dismiss should be denied. To that end, Appellant reiterates the import of the January 18, 2018 Decision and the determination as to the threshold requirements of Subtitle U § 203.1(n).

Finally, even if this Board decides to grant DCRA's Motion to Dismiss, DCRA's position that the Board must decide if FSMB, Inc. satisfies the threshold requirements of Subtitle U § 203.1(n) – whether such decision is made through the subject appeal or directly through evidence introduced during the public hearing on BZA Case No. 19659 – remains true. Indeed, the OP Staff Report at Exhibit No. 110 in BZA Case No. 19659 states that OP conditioned its recommendation on “The BZA's concurrence with the Zoning Administrator determination that the Applicant would qualify as a ‘nonprofit organization’.”¹ Accordingly, irrespective of the mechanism (either through this Appeal or through evidence in BZA Case No. 19659) it is undisputable that the Board must determine if FSMB, Inc. satisfies the threshold requirements Subtitle U § 203.1(n) before considering the merits of FSMB, Inc.'s application.

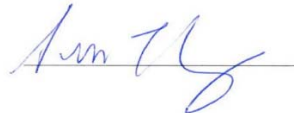
II. THIS APPEAL SHOULD BE CONSOLIDATED WITH BZA CASE NO. 19659 OR, ALTERNATIVELY, THE MATTERS SHOULD BE ADJUDICATED ON THE SAME HEARING DATE

In the Statement of Appeal, the Appellant outlined that the requirements of Subtitle U § 203.1(n) are a critical threshold determination for whether the relief requested by FSMB, Inc. in BZA Case No. 19659 can be processed as a special exception, or if FSMB, Inc. would require variance relief. Given that this appeal is directly intertwined with BZA Case No. 19659, the Appellant requests that the two matters be consolidated. A consolidation would be the most economical and efficient method for the Board to adjudicate the related cases.

¹ Notably, even OP concluded that the January 18, 2018 Decision was a “determination”, on which OP based its decision that special exception relief was appropriate.

The Zoning Administrator asserts that the cases should not be consolidated because the Zoning Administrator is not a party in BZA Case No. 19659. However, the Zoning Administrator cites no legal basis for this assertion, and it is unclear how this has any bearing on consolidation of the two cases. Notwithstanding, if the Board determines not to consolidate this appeal with BZA Case No. 19659, the Appellant requests that the Board hear the two cases on the same hearing date. Under this scenario, the Appellant would also request that this appeal be heard *prior to* BZA Case No. 19659. There is precedent for such action. *See* Appeal of Shaid Q. Qureshi BZA Case No. 19335 and Application of Shahid Q. Qureshi, BZA Application No. 19385, both heard together on July 12, 2017. Such scheduling would allow the Board to adjudicate whether FSMB, Inc. has met the threshold requirements of Subtitle U § 203.1(n) before considering BZA Case No. 19659 in its entirety.

Respectfully submitted,
COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read 'Samantha L. Mazo', written over a horizontal line.

Samantha L. Mazo