



June 12, 2018

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

RE: BZA Application 19722 (Kline Operations) – Motion to Oppose Party Status Request

Chairperson Hill and Honorable Members of the Board:

On behalf of Kline Operations, LLC (the “Applicant”), please find enclosed a motion to oppose the party status request of Andy Shallal (on behalf of Busboys and Poets). This request is untimely as per the filing deadline requirements contained in Subtitle Y § 404.3. Consequently, we additionally request that the party status request contained in BZA Ex. No. 79 be denied.

Thank you for your attention to this matter.

Sincerely,

COZEN O’CONNOR

By: Meridith Moldenhauer

BEFORE THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

**APPLICATION OF
KLINE OPERATIONS LLC**

**BZA APPLICATION NO. 19722
CONTINUED HEARING DATE: JUNE 20, 2018**

**APPLICANT’S OPPOSITION TO UNTIMELY PARTY STATUS REQUEST AND
MOTION TO DENY PARTY STATUS**

On behalf of Kline Operations, LLC (the “Applicant”), please consider the following opposition to the Request for Party Status filed by Andy Shallal on behalf of Busboys and Poets (the “Shallal Request”) (Ex. No. 79). As will be explained below, the Request for Party Status is untimely filed and, therefore, does not meet the standard to obtain party status as set forth under Subtitle Y § 404.3. Accordingly, the request should be denied.

I. The Request is Untimely Pursuant to Subtitle Y § 404.3

Under Subtitle Y § 404.3, “[a] Request for Party Status that is to be considered at a public hearing shall be filed with the Board **not less than fourteen (14) days** prior to the public hearing.” (Emphasis added). Here, the Applicant’s case was originally scheduled for hearing on March 28, 2018. The Applicant’s case was subsequently rescheduled for a public hearing on April 4, 2018, at which time the Board held a full hearing on the application. As such, the deadline for requesting party status was March 24, 2018, or 14 days prior to the full hearing on the application.

By filing his request on June 8, 2018, Mr. Shallal¹ simply failed to file a timely request pursuant to Subtitle Y §404.3. Not only did Mr. Shallal fail to file within 14 days prior to the hearing date, but his party status request was made *subsequent* to the hearing date on April 4, 2018. Therefore, the Shallal Request is untimely and should be denied.

¹ It should be noted that there is no letter of authorization in the record for Mr. Shallal to appear on behalf of Busboys and Poets. The Shallal Request fails to include proof that the entity authorizes the person filing to do so, such as a resolution of the “board of directors; a copy of the by-law provision authorizing the particular officer, employee, or agent to represent the person in such proceedings; a letter signed by all the members of the organization; or similar proof satisfactory to the Board.” Subtitle Y § 404.1(g).

II. The Board Previously Determined Requests for Party Status Must be Made 14 Days Prior to the First Hearing on an Application

In prior instances of party status applicants filing untimely requests, the Board has determined that Subtitle Y § 404.3 refers to the *first* hearing on an application and not to subsequent, continued hearing dates. For instance, BZA Case No. 19659 was originally presented to the Board on December 20, 2017, and the hearing was continued to January 31, 2018. On January 16, 2018, a neighbor in opposition to the case submitted a request for party status. *See* BZA Case No. 19659, Ex. No. 104. At the continued hearing on January 31, 2018, the Board denied Mr. Guinee’s party status request, finding that the “threshold date” was 14 days prior to the first hearing on December 20th. *See* BZA Case No. 19659, Jan. 31, 2018 Trans. at p. 91. As such, the Board determined that the party status applicant in that matter was “late to apply” and that the request was “untimely.” *See* BZA Case No. 19659, Jan. 31, 2018 Trans. at pp. 79, 92.

Similarly, in this case, the Board should hold that the threshold date runs from its first hearing on the Application, which was April 4, 2018. On that date, the Board also heard testimony from the applicants for party status in opposition, and granted two of those requests pursuant to Subtitle Y § 404.2.² Further, at the conclusion of the proceedings on April 4, 2018, the Board very clearly continued the matter for a *limited scope* hearing on May 16, 2018 “on the few issues that we’ve raised.” *See* Apr. 4, 2018 Trans. at p. 154. On May 16, 2018, the Board held a limited public meeting and further continued the case to June 20, 2018 to provide additional time for all parties to continue their efforts at reaching an agreement and to file their supplemental information into the case record.³ As such, the Request for Party Status should be denied because it was filed

² The Board granted party status for Mr. Aubrey Stephenson and Ogden Cap Properties (450 K CAP LLC). The Board dismissed the party status request of Michael D. Smith pursuant to Subtitle Y § 404.10 because no one attended the April 4, 2018 hearing on Mr. Smith’s behalf.

³ Mr. Nahley, counsel for Ogden CAP Properties, attended this public meeting, but a representative for Mr. Stephenson did not.

after the initial public hearing for the Application.

III. Conclusion

In summation, the Shallal Request is untimely and does not satisfy the requirements of Subtitle Y § 404.3. Therefore, the Applicant opposes the Shallal Request and respectfully asks the Board to deny the request.

Respectfully Submitted,
COZEN O'CONNOR



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Certificate of Service

I certify that on June 12, 2018, a copy of this opposition to party status was served, via email, as follows:

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