

October 22, 2018

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

**Re: BZA Case No. 19751
Applicant's Letter Seeking Clarification on MAHCA's Expert Reports and Legal
Representation**

Chairperson Hill and Honorable Members of the Board:

Please consider this letter a request on behalf of Applicant MED Developers, LLC (the "Applicant"), to clarify the recent filing (BZA Ex. No. 318) by the party in opposition, Massachusetts Avenue Heights Citizens' Association ("MAHCA"). In light of this filing, which identifies three expert witnesses but provides no further information as to MAHCA's position, the Applicant seeks to confirm two outstanding issues that arose as part of MAHCA's Motion to Postpone (BZA Ex. No. 155) and during the Board's hearing on September 26, 2018 (the "September 26th Hearing"):

1. MAHCA's Expert Written Reports

In MAHCA's Motion to Postpone, MAHCA requested a postponement of the September 26th Hearing in part to retain expert witnesses and provide the witnesses with sufficient time to "review the case, conduct research and do analysis, **prepare a written report** and prepare for a BZA hearing." (emphasis added) *See* BZA Ex. No. 155, pg. 2. During the September 26th Hearing, MAHCA stated that it is "in the process of securing experts and they all have like six-week lead times to **prepare reports.**" (emphasis added) *See* 9/26/18 transcript, pgs. 15-16. Importantly, after granting MAHCA's postponement request over the Applicant's opposition, the Board specifically asked that MAHCA file all expert information or a "prehearing statement" no later than October 17, 2018. *See* 9/26/18 transcript, pgs. 31-33.

Despite the Board's request and the resulting three week period of time, MAHCA's filing on October 17, 2018 merely identifies three expert witnesses, but includes **no written reports.** *See* BZA Ex. No. 318. It is our understanding that the postponement granted by the Board and proposed deadlines are intended to avoid a situation where the Board and the Applicant have inadequate time to review expert reports. Given the specific instructions of the Board, MAHCA should be barred from attempting to late file or present any expert reports at the hearing.

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2. MAHCA's Legal Representation

MAHCA also sought a postponement of the September 26th Hearing because "MAHCA was able to retain counsel on September 12, 2018, but counsel cannot attend the September 26, 2018 hearing, and even if counsel had been able to, she would not have had enough time to be prepared on September 26, 2018." *See* BZA Ex. No. 155, pg. 2.

The issue of representation came up frequently during the September 26th Hearing. A representative of MAHCA started by stating that "I just want to clarify that we're here pro se. We haven't really had time to engage with our counsel." *See* 9/26/18 transcript, pg. 9. In regard to the postponement request, Chairman Hill then asked, "there has been a request to postpone, correct? And, that again, is so that you can – I thought you had an attorney but the attorney wasn't present today." *See* 9/26/18 transcript, pg. 15. To which MAHCA replied, "So, we hired counsel, but she isn't in town today and hasn't been able to turn to this case yet." *See* 9/26/18 transcript, pg. 15. As such, the Board decided to "let the party in opposition have an opportunity to get their counsel together and get kind of their ducks in a row." *See* 9/26/18 transcript, pg. 19.

Despite the postponement, MAHCA still does not appear to be represented by counsel. There is no reflection of any legal representation in MAHCA's filing on October 18th. The certificate of service is signed by MAHCA's president, not separate counsel. *See* BZA Ex. No. 318. Given that one of MAHCA's primary reasons for requesting the postponement was to obtain counsel, the Applicant seeks to confirm whether MAHCA will, indeed, be represented by counsel at the postponed hearing on November 14, 2018.

We appreciate this opportunity for clarification on the case record. The Applicant looks forward to presenting its case to the Board on November 14, 2018. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR



BY: Meredith H. Moldenhauer

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 2018, a copy of the foregoing Applicant's Letter Seeking Clarification on MAHCA's Expert Reports and Legal Representation was served, via electronic mail, on the following:

District of Columbia Office of Planning
c/o Brandice Elliott
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Advisory Neighborhood Commission 3C
c/o Nancy MacWood, Chairperson
nmacwood@gmail.com

Massachusetts Avenue Heights Citizens' Association
c/o Paul Cunningham, Anita Crabtree, and Andrea Ferster
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