

BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA

Case No. 19818

Appellant's and Intervenors' Response to Appellee's Request to Postpone

On November 21, 2018, Appellee 1267 Penn St NE LLC filed a request to postpone the hearing set for November 28 (Exhibit 47). On November 27, Board Secretary Clifford M. Moy notified Appellant Stephen Cobb that the Board would hear this request as a preliminary matter. He also informed the Appellant that the Board would prefer a written response before the hearing. The Appellant therefore submits this response for himself and the Intervenors, Adam and Shelby Telle.

The Appellant and Intervenors cannot agree to a postponement at this time. The greatest concern is the timeline. The Appellant filed this appeal on May 30, 2018. The Appellee did not retain counsel or submit any filings before the original hearing on September 26—a period of 17 weeks, or 119 days. At the hearing, the Board recommended that the Appellee retain counsel. And while the Appellee did retain counsel, they did not do so until November 19—54 days after the original hearing, and only 9 days before this hearing.

There is also a practical aspect to opposing the request. Appellee's counsel, Mr. Martin Sullivan, explained to the Appellants and Intervenors that he was seeking postponement because:

As it turns out, the contractor did extend the wall beyond what is approved in the plans, and beyond what is permissible as the rear building line. They are in the process of correcting that, and that will also require a revision to the permit plans for that aspect of this.

(Exhibit 1 to this Response, Email from Martin Sullivan to Shelby Telle and Stephen Cobb (Nov. 21, 2018)). As Mr. Sullivan noted, the Appellee must already seek a permit revision. Should the Board rule for the Appellant and Intervenors on any of the points they raise, then further revisions would be required. It would be more practical for the Appellee to seek all revisions in one application, rather than breaking them up. It would also work to the benefit of the Appellant, the Intervenors, and the Board, as further postponement would entail a third hearing in this case. It is therefore in the interest of all parties to deny the Appellee's request to postpone and hear this case as scheduled.