



March 21, 2019

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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. 19960
Applicant's Opposition to the Party Status Request of Bootz on the Ground
Community Coalition**

Chairperson Hill and Honorable Members of the Board:

On behalf of the Applicant, MCF 1400 Montana, LLC and MCFI Limited Partnership (collectively the "Applicant"), please find enclosed Applicant's Opposition to the Party Status Request of Bootz on the Ground Community Coalition.

Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read "mmoldenhauer", written over a light blue horizontal line.

Meridith Moldenhauer

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2019, a copy of the Applicant's Response in Opposition to the Party Status Request by Bootz on the Ground Community Coalition was served, via electronic mail, on the following:

District of Columbia Office of Planning
c/o Stephen Mordfin
1100 4th Street SW, Suite E650
Washington, DC 20024
stephen.morfin@dc.gov

The District's Department of Transportation
55 M Street SE, Suite 400
Washington, DC 20003
Anna.chamberlin@dc.gov

Advisory Neighborhood Commission 5C
c/o Jacqueline Manning, Chairperson
5C04@anc.dc.gov

Advisory Neighborhood Commission 1A07
c/o Kirsten Williams, SMD Commissioner
5C06@anc.dc.gov

Aristotle Theresa¹
Stoop Law
1604 V Street SE
Washington, DC 20020
atheresa@stooplaw.com



Meridith Moldenhauer

¹ The party status applicant was served as a courtesy as only parties are required to be served pursuant to Subtitle Y § 403.6.

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

**APPLICATION OF
MCF 1400 MONTANA LLC &
MCFI LIMITED PARTNERSHIP**

**BZA APPLICATION NO. 19960
HEARING DATE: APRIL 3, 2019**

**APPLICANT’S OPPOSITION TO PARTY STATUS REQUEST OF BOOTZ ON THE
GROUND COMMUNITY COALITION**

On behalf of the Applicant, MCF 1400 Montana, LLC and MCFI Limited Partnership (collectively the “Applicant”), please consider the following opposition to the Request for Party Status filed by “Bootz on the Ground Community Coalition¹” (the “BGCC” or the “Opposition”). As will be explained below, BGCC does not meet the standard to obtain party status as set forth under Subtitle Y §404; accordingly, BGCC’s Request for Party Status should be denied.

On March 20, 2019, BGCC filed a Request for Party Status. The Applicant became aware of the Request for Party Status while checking the BZA record on March 20, 2019.² The Applicant is currently scheduled to present its application (the “Application”) to the Board on April 3, 2019. The Applicant respectfully requests the Board to consider this preliminary matter at the upcoming BZA hearing on March 27, 2019.

I. BGCC fails to meet the necessary conditions to be granted party status pursuant to Subtitle Y § 404

The Applicant opposes BGCC’s Request for Party Status because BGCC has failed to meet the burden for party status. In order to be granted party status, BGCC must demonstrate that it meets all three criteria set forth under Subtitle Y § 404.13. While we believe BGCC’s request

¹ BGCC is an association or similar entity and thus has not sufficiently produced documents as required under Subtitle Y§ 404.1(g).

² BGCC failed to serve Applicant as required under Subtitle Y § 404.6 as will be more fully noted below.

is deficient in multiple ways, we focus this opposition on one critical failure at this time (but can provide supplemental additional rationale if requested or necessary). If the requesting party status applicant fails to satisfy one of the three criteria, such failure is fatal, and the Board should deny the request. Subtitle Y § 404.13 requires that for an individual or entity to achieve party status, they must show that their “interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.” *See* Subtitle Y § 404.13. The “interests” of a party that must be more impacted than the general public include “environmental, economic, social, or other impacts.” *See* Subtitle Y § 404.1(i)(4).

The Opposition fails to meet its burden to obtain party status as set forth in the Zoning Regulations. The Zoning Regulations provide that requests for party status must include a reference to “the distance between the person’s property and the property that is the subject of the application before the Board.” *See* Subtitle Y § 404.1(i)(3). As Zoning Commissioner May has indicated, “200 ft. is often the threshold” for determining whether the person or entity requesting party status will be impacted more than the general public. *See Z.C. Case No. 11-12, 12/19/2011 Hearing Transcript p. 35.* BGCC states that its three members will be impacted “uniquely because they are very close to the property” and that “arguably one member lives within 200 ft.” Neither of these allegations are true. None of BGCC’s members live within 200 ft. of the Property.³ The Board has continuously applied the 200-foot rule in denying party status because properties beyond 200 ft. of the subject property are not considered to be more uniquely impacted than the general public. *See e.g. Application No. 17081 of St. Patrick's Episcopal Day School* (the Board denied the party status request by consensus because the person requesting party status was not within

³ *See* BZA Exhibit No. 6.

200 ft. of the subject property and, therefore, “would not be affected by the outcome of [the] case any more so than any other member of the general public”). BGCC’s members’ alleged concerns are not unique, nor do they show they will be impacted more than the general public. Therefore, BGCC does not meet the requirements of Subtitle Y § 404.13.

II. Request for Party Status fails to comply with Subtitle Y § 404

In addition to the deficiencies noted above, the Request for Party Status fails to comply with multiple requirements under Subtitle Y § 404.⁴ Specifically, the Request for Party Request does not comply with Subtitle Y § 404.1(h) concerning designation of witnesses. In order to be granted party status, BGCC must provide a list of witnesses who will testify on BGCC’s behalf as well as a written summary of each witness’s testimony. Here, BGCC does not do so, but requests to reserve its right “to bring experts to the hearing” and states that “to the extent possible BGCC will provide expert witness resumes prior to the hearing date.” As stated above, BGCC cannot meet its burden through blanket statements concerning witness testimony. The Applicant must be provided with not just the names of witnesses, but also their testimony in order to properly prepare for the hearing before the Board on April 3rd.

Further, BGCC failed to serve Applicant or to submit a “certificate of service” with their request for party status as required pursuant to Subtitle Y §§ 404.6 and 404.7, respectively. BGCC’s request for party status was filed by legal counsel who is familiar with the Zoning Regulations and must be held to a higher standard than a pro se party regarding compliance with basis service requirements. Failure to serve the Applicant disadvantages the Applicant and creates

⁴ In addition to their failure to comply with the requirements of Subtitle Y §§ 404.1(h), 404.6 and 404.7, BGCC’s request for party status failed to comply with Subtitle Y § 404.1(i)(3) as references to the actual distances between BGCC’s three members’ properties and the Applicant’s property were noticeably absent.

administrative inefficiency for the Board. Given these failures alone, the Board should find the Request for Party Status incomplete and deny the request.

III. BGCC improperly attempts to merge Applicant's Project with Brookland Manor

Finally, we wish to take this opportunity to clarify the record. BGCC improperly attempts to combine issues raised in the Brookland Manor⁵ PUD with this case. Comingling these cases would be inappropriate as 1400 Montana is an independent project from the Brookland Manor PUD; while both are being developed by Mid-City Financial Corporation, the properties are owned under completely different ownership structures. Indeed, the Applicant purchased the subject property in July 2018, which is almost three years after the District of Columbia Zoning Commission approved the master plan PUD for Brookland Manor (ZC 14-18). The legal definition of the property subject to ZC Order 14-18 and 14-18A does not, and has never, included the subject property. Further, both the legal team and the development team for the two projects are distinct – emphasizing the bifurcation of both applications and projects. Beyond that, the Applicant has requested special exception relief and, is not, nor has it ever been, part of ZC Case No. 14-18. Importantly, members of BGCC are residents of Brookland Manor and have already availed themselves of their legal rights in ZC 14-18A⁶ and, as this Application is neither part of nor affiliated with the Brookland Manor PUD, any and all references should be stricken from the record.

⁵ The Applicant's property is located at 1400 Montana Ave, NE, directly across from the Brookland Manor site, PUD case no. ZC 14-18A, which received approval in May, 2017 and is currently under appeal at the D.C. Court of Appeals.

⁶ Minnie Elliott, the stated authorized agent for BGCC, is the sole named appellant in the DC Court of Appeals case for ZC 14-18A.

IV. Conclusion:

In light of the above, the Applicant respectfully requests that the Board hear this Party Status Request and the Applicant's response in opposition to this request at its upcoming March 27th, 2019 public hearing. In summation, the Applicant opposes the Opposition's Request for Party Status, and requests that the Board deny the Request for Party Status.

Respectfully Submitted,



Meridith Moldenhauer