



**BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA**



FORM 150 – MOTION FORM

**THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A
FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.**

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.:	20135					
Motion of:	<input type="checkbox"/> Applicant	<input type="checkbox"/> Petitioner	<input type="checkbox"/> Appellant	<input checked="" type="checkbox"/> Party	<input type="checkbox"/> Intervenor	<input type="checkbox"/> Other _____

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

Motion for Continuance (Please see attached).

Points and Authorities:

On a separate sheet of 8 1/2" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form (see instructions).

Consent:

Did movant obtain consent for the motion from all affected parties?

- | | |
|---|--|
| <input type="checkbox"/> Yes, consent was obtained by all parties | <input type="checkbox"/> Consent was obtained by some, but not all parties |
| <input type="checkbox"/> No attempt was made | <input checked="" type="checkbox"/> Despite diligent efforts consent could not be obtained |

Further Explanation: I served the Motion to all affected parties only today, the other parties may consent

CERTIFICATE OF SERVICE

I hereby certify that on this day of , 20

I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning in the above-referenced ZC or BZA case via:

<input type="checkbox"/> Mailed letter	<input type="checkbox"/> Hand delivery	<input checked="" type="checkbox"/> E-Mail	<input type="checkbox"/> Other _____
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Signature:	Melinda Roth		
Print Name:	Melinda Roth		
Address:	3418 O Street NW Washington DC 20007		
Phone No.:	202 714 8172	E-Mail:	melindaroth24@gmail.com

Board of Zoning Adjustment
District of Columbia
CASE NO. 20135
EXHIBIT NO. 138

Case Number: 20135

Name of Movant: Melinda Roth/Party Status

The relief you are requesting: Motion for a Continuance

Each and every reason you believe you are entitled to relief and why the ZC or BZA should grant your motion, including relevant references to the Zoning Regulations or Map:

1. I, along with my neighbors in the immediately impacted area, the two adjacent property owners to the Subject Property, affected businesses and others who have an interest in this matter, wish to seek the advice of counsel. We have been materially prejudiced by the original denial by the BZA of Party Status. Because the BZA did not grant us Party Status until the limited scope continued hearing on December 11th, after originally denying it at the initial public hearing on October 30th, our efforts to obtain representation will take additional time. We have been actively seeking representation, and have spoken already to several attorneys, but have been delayed by the holiday calendar and conflicts of interest from various potential counsel. While we have additional attorneys to contact, this process takes time. Denial of this Motion for Continuance will result in further material prejudice to me, adjacent property owners, neighbors and affected local businesses as we are unable to comply with the arbitrary timeline to submit additional materials by December 30th given our need to have counsel.

We were further prejudiced at the October 30th hearing. When a neighbor asked at the hearing on October 30th if we could hire a lawyer to represent us, Chair Hill replied, "No, that would definitely -- we've already passed the party status part." As noted above, we took the Chair's words to heart and did not try to hire representation until Party Status was granted, which has resulted in material prejudice that would be exacerbated by a denial of this Motion.

2. Furthermore, with Party Status, we have the right to cross examine (Subtitle Y § 408.6) all other persons who have testified in the case, and this has clearly not yet been made available. We have had no ability to cross examine any witnesses during the first two hearings, nor been able to correct any misrepresentations that were made during that testimony. This ability, as provided by the regulations, must be met, or those witnesses and their testimony cannot be considered by the BZA in their deliberations, including any witnesses in support of the Applicant such as (but not limited to) the ANC authorized representative, the Office of Planning representative, and all Call Your Mother employees. Therefore, a continuance is also necessary in order to afford me the rights I have as a Party to this matter. The regulations clearly state, Subtitle Y § 409.3, "*In a special exception or a variance case, every party shall have the right to present in person or by counsel their case by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.*" The Motion for Continuance will allow the BZA to determine how best to allow these cross examinations to occur.

3. In addition, the ability to cross examine all witnesses must also include the right to question them on the third prong required for the Applicant to prove their case for the granting of an area variance, namely that granting the variance would not have a "substantial detriment to

the public good, nor be inconsistent with the general intent of the zoning regulations.” Given the original public hearing on October 30th heard testimony from both sides on this third prong, the Chair requested that this prong not be discussed during the limited scope hearing held on December 11th, and we were thereby frustrated to present testimony or cross examinations on the third prong issues on December 11th. The Motion for Continuance will allow us, with counsel, to prepare this evidence and hold any cross examinations necessary.

4. As Party Status was awarded only on December 11th, we were given no time to prepare for the limited scope hearing. At that time, we immediately requested a continuance. Given the grossly different ability to prepare as a Party versus a person testifying for only 3 minutes, we now formally, and again, request a continuance in order to not only prepare properly, but to also have the ability to cross examine all previous witnesses as specified above, including relating to any aspects of the Applicant’s burden of proof and the legal standard required to grant the variance.

5. The Applicant was encouraged by the BZA to submit an amended application for an area variance under the corner store provisions rather than their original application for a use variance. Even though this is a different variance, there were no requirements for notice to be reissued to the affected neighborhood, nor was a notice placard posted for the area variance application.

The requirements of the corner store provisions in the R-20 Zone include the restriction to be more than 750 feet away from a commercial zone. The undisputed fact is that the Subject Property is within 750 feet from the MU-3 Zone, and therefore has asked for that requirement to be waived. However, the businesses that would be directly affected by this waiver were never contacted by the Applicant nor had any public notice of the hearing on December 11th. The neighbors in opposition, however, were able to contact the owners of both Wisemiller’s Deli as well as the building that Saxby’s coffee shop leases. These owners were able to come and testify for three minutes on December 11th but would also like more time to prepare evidence that granting the requested variance would be detrimental to their businesses and “negatively impact their economic viability” (Subtitle U § 254.15 (b)).

In addition, the owner of one of the adjacent properties, sent in a letter of opposition on December 15th. We would like the time to confer with him as he rents out this property and believes the variance would affect his ability to continue to rent the house. He does not live in the US, and therefore communication is not as straightforward with him.

To summarize, the change in legal theory at the suggestion (and practically the behest) of the BZA, but without notice to affected parties, will result in material prejudice both to adjacent neighbors and potentially affected business owners in the absence of additional time to prepare.

6. The timeline and process requested at the end of the December 11th hearing also present material prejudice as it is unfair to ask the Party to submit materials by December 30th and then allow the Applicant almost two weeks to review this submission. The Party should get equal

time to review any further documentation submitted by the Applicant. We would therefore ask that the Party and the Applicant both submit any materials by January 17th, and then provide equal time for both to review these submissions before the next hearing.

7. Delaying the hearing to provide sufficient time for the opponents to hire counsel, who will need to get up to speed quickly, and collect the needed evidence from the businesses that will be negatively impacted if the variance is granted is a necessity to ensure a fair process. A delay hurts no one as the property owner (please note the property owner is the actual applicant) is currently receiving rent. Call Your Mother, as the tenant, has the right to open, now, as a retail store. They claimed they would do so in the first two hearings, but once the opponents encouraged them to do so, they stopped making these claims they would open as a matter of right. While CYM may be upset at a further delay, they have the right to open now and earn revenue on retail sales. No one who is an actual party to this proceeding is negatively affected by granting this motion.

8. As stated on social media from a witness in support of CYM in referring to the BZA, "They want to give the opponents a final chance to build the record so that when they approve the variance any legal challenges would be weaker." We therefore request that this Motion must be approved in order for us to "build that record." Denial of this Motion for Continuance would only serve to limit severely the record for the Party and give rise to a long and burdensome appeals process

Whether consent was obtained by other parties: Not yet, have served other parties today

Certificate of Service: Please see attached

Signature and Date: MAR 19 December 2019

Contact Information: Melinda Roth
3418 O Street NW
Washington DC 20007
melindaroth24@gmail.com
202-714-8172

Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20001

19 December 2019

**RE: AFFIDAVIT OF SERVICE for MOTION for CONTINUANCE
Case #20135 BZA Application - 3428 O Street, NW (Square 1228, Lot 76)**

I hereby confirm that I have sent a copy of the motion to the agent of the Applicant, the affected Advisory Neighborhood Commission (ANC2E) and the Office of Planning.

Martin Sullivan
Sullivan and Barros
1155 15th Street NW Suite 1003
Washington DC 20007
msullivan@sullivanbarros.com

Area Neighborhood Commission 2E
3265 S Street NW
Washington DC 20007
2E@anc.dc.gov

Joel Lawson
Office of Planning
DC Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024
joel.lawson@dc.gov