

December 30, 2019

via IZIS

Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: BZA Case No. 20135 - 3428 O Street, NW; Response to Melinda Roth's Demand for Another Continuance.

Dear Members of the Board:

The Applicant opposes Melinda Roth's request for a further continuance beyond the month granted at the last hearing. She has provided no justifiable reason for a further continuance. The vast majority of hearings with party-status opposition proceed on the day that party status is granted. Rarely, if ever, has an opposing party claimed to be prejudiced by their "surprise" in being granted party status. When they do make such a request, it is often granted, but typically for a time period shorter than the additional time Ms. Roth has already been granted in this case. There is nothing which would justify another extension in this case, and it would only serve to prejudice the Applicant.

At the third hearing, on December 11th, the Board took the extraordinary action of entertaining a second request from Ms. Roth for party status; previously denied. Such a request is not even permissible, under the Zoning Regulations (Y-404.14,404.15). The Applicant was clearly prejudiced by the Board's apparent waiver of these Regulations, as well as the reconsideration of the original party status request, even though there were no new facts about Ms. Roth's relationship to the Applicant's proposal. This reconsideration is likely to penalize the Applicant, based on the timing of their hoped-for full-scale opening, should the Application be approved. The Applicant therefore requests that the Board not further prejudice the Applicant by

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granting the delay requested by Ms. Roth. She has provided no information or argument which would support her request for delay.

- Ms. Roth was granted party status as an individual. She does not represent her “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.” In fact, one adjacent neighbor that testified at the December 11th hearing stated that she was “very excited for [CYM] to come to Georgetown.” Her concerns were based not on the proposed use but on a fear that the approval would eventually lead to a “full-fledged restaurant.”
- In the majority of BZA cases, a hearing proceeds on the same day that opposition party status is granted. If a continuance is granted, it is limited to a matter of weeks. Ms. Roth, in addition to already receiving a nearly unlimited ability to fully participate in the hearings even without party status, believes that a mere 5 weeks is unfair to her. A continuance of five weeks is more than reasonable to her interests, and any further delay would severely prejudice the Applicant.
- Ms. Roth has had the ability to seek legal counsel from day one, regardless of the party status decision. She and others helping her are clearly well-versed in legal issues, and a claim for additional time to hire legal counsel smacks of a mere delay tactic to further hamper the Applicant’s proposal. Ms. Roth acknowledged that she teaches at a law school. She has shown herself adept at analyzing the relevant zoning law, providing the Board with citations to legal cases and discussing the relevant zoning regulations with aplomb. Moreover, the Board already allowed her to have unnamed learned individuals sit at counsel table with her to provide her guidance and counsel in presenting her case.

- Despite having almost no limit on her ability to speak before the Board and file written submissions, Ms. Roth now falsely claims that she has “not been able to correct any misrepresentations that were made during that testimony.” She has had every opportunity to so “correct” and she still has such opportunity, in accordance with the Board’s latest continuance and deadline for her submission.
- Ms. Roth will apparently have the ability to cross-examine witnesses, although the Applicant would suggest that cross-examination in this case offers no benefit that Ms. Roth could not realize by simply stating her rebuttal case to any testimony on the record. The testimony given in this case is not of a technical nature and not testimony which typically involves insightful or effective cross-examination.
- Ms. Roth and her neighbors have had ample opportunity to present their case to rebut the Applicant’s third prong argument, and all they have produced is photos of a line which might possibly exist a few hours on weekend mornings. It is simply false for her to say that she has been “frustrated to present testimony” on the third prong issues, and as stated above, cross-examination would effect result in no material change in testimony or evidence presented to this point.
- Ms. Roth argues that it is unfair for her to not have the last submission prior to the next hearing, even though the Applicant having the last chance to respond is the standard process for almost all such pre- and post-hearing filings.
- Ms. Roth had the opportunity to file a detailed party status request in October. She also filed a prehearing statement in opposition as well as a powerpoint presentation in opposition. She and her colleagues have filed additional submissions even beyond those

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filings. The opposition has had more than ample time at each hearing to state and attempt to support their opposition arguments.

For all the reasons noted above, the Applicant requests that the Board deny Ms. Roth's attempt to further delay the completion of this Application and keep to the schedule adopted at the December 11th hearing. To find otherwise would unreasonably delay the hearing and prejudice the Applicant.

Sincerely,

Martin P Sullivan

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CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2019, an electronic copy of this Response to Melinda Roth's Demand for Another Continuance was served on the following on behalf of the Applicant, 3428 O Street, LLC.

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