

**DC Board of Zoning Adjustment
441 4th Street NW, Suite 200 South
Washington, DC 20001
bzsubmissions@dc.gov**

DC for Reasonable Development
Daniel Wolkoff, member
Cynthia Carson, member
Melissa Peffers, member
Jerome Peloquin, member,
James Fournier, member
Linwood Norman, member,
Jimmie Boykin, member

Appellant,

v.

DC Department of Consumer and
and Regulatory Affairs,

Respondent.

BZA Appeal No. 20191

**APPELLANT’S EMERGENCY MOTION TO STRIKE DCRA’S JUNE 18, 2020 REPLY IN
SUPPORT OF ITS MARCH 4, 2020 MOTION TO DISMISS THE APPEAL**

On May 28, 2020, the DC Board of Zoning Adjustment (“BZA”) issued a Memorandum (“BZA Memorandum”) setting forth a meeting on June 24, 2020 to make some initial decisions in Appeal Case No. 20191 and to set a date for a hearing in the matter.

DCRA oversteps the BZA instructions in the Memorandum and files additional arguments in support of their prior preliminary filing prejudicing Appellants and other parties. The BZA should strike DCRA’s June 18, 2020 filing or order the Respondent, DCRA to file a Motion for Leave by which all parties may then respond to in a fair and equitable way.

Upon consideration of the above, Appellants come now with good cause and ask the BZA grant this motion per 11-Y DCMR 506.1(b),(h). All parties have been served per 11-Y DCMR 205, et seq. Since this is being filed as an emergency given the timing of submission, none of the opposition parties have actively granted consent to this motion, and we presume they will oppose.

Introduction

The BZA Memorandum dated May 28, 2020, orders all parties to submit any preliminary matters, including any motions, by June 8, 2020. Then, parties were asked by the BZA to submit responses to any filed preliminary motions by June 18, 2020.

Per the BZA Memorandum, on June 8, 2020, Appellants filed a Motion for Summary Affirmance of the appeal. Respondent, DCRA and Property Owner, DMPED did not submit any filings on June 8, 2020, as they already had filed preliminary motions to dismiss on March 4, 2020.

Then per the BZA Memorandum, on June 18, 2020, Appellants filed a response to DCRA and DMPED's motions to dismiss dated March 4, 2020. On this same day, DMPED filed a Response in Opposition to Appellant's June 8, 2020, Motion for Summary Affirmance of the appeal. Additionally, late on June 18, 2020, Respondent, DCRA filed a *Reply* In Support of its Motion to Dismiss the Appeal (emphasis added).

Despite DCRA actually further substantiating Appellants' arguments that the ZA provides absolutely no written technical or legal rationale for the record as to why important procedural zoning regulations can be ignored and bypassed (such as the requirement that Second-Stage zoning review be approved by the Zoning Commission for the McMillan Park "Master Plan" before permits can be legally issued), DCRA oversteps the BZA Memorandum dated May 28, 2020, unilaterally taking extra time to argue their position in support of dismissal. This contradicts the BZA's clear instructions.

Accordingly, Appellant's ask the BZA to strike from the record DCRA's Reply in Support dated June 18, 2020, or ask DCRA to file a Motion for Leave to file their Reply by which Appellants may then respond.

Argument

All parties except for DCRA adhered to the BZA Memorandum dated May 28, 2020

Pursuant to the BZA instructions, on June 8, 2020, Appellants filed a motion to affirm the appeal as a preliminary matter. In turn, on June 18, 2020, Property Owner, DMPED filed a response in opposition to Appellant's motion and although mischaracterizing Appellant's submission and conclusions, the opposition response by DMPED at least followed the instructions by the BZA. ¹

¹ DMPED purposely sews confusion in their June 18, 2020 opposition response to the Appellants June 8, 2020 motion for summary affirmance. DMPED references "stages" of construction of the McMillan Park redevelopment project in an attempt to conflate it with the types of PUD applications and approvals (First- and Second-stage) that exist under the DC Zoning Regulations. However, as

In contrast to DMPED, DCRA didn't respond to preliminary motions made by the Appellant. Rather, DCRA's June 18, 2020 reply seeks to bolster their own preliminary March 4, 2020 motion to dismiss the appeal in effect providing the Respondent additional time for more argument that now Appellants aren't able to respond to. This is denial of due process to all parties and must be remedied.

Conclusion

The BZA is authorized to strike from the record DCRA's Reply in Support of its Motion to Dismiss the Appeal dated June 18, 2020, and should do so for the aforementioned reasons. Otherwise, the BZA can and must order DCRA to file a Motion for Leave to accept their reply dated June 18, 2020 so that all parties may respond to DCRA's extra-filing and allow for equity in airing of the arguments among those trying to fairly participate in these matters.

Regards,

/s/n

Chris Otten, co-facilitator

DC for Reasonable Development

202-656-5874

dc4reality@gmail.com

CERTIFICATE OF SERVICE

Appellants have shown in all filings on the record, any conditions setting forth a staged timing of demolition and construction activities is a far different matter than the administrative processing of First- and Second-stage zoning review and approval that must occur prior to any demolition and construction activities starting at the site per DC Zoning Regulations. That is, DMPED wants to describe conditions found in ZC Order 13-14(6) that discusses the timing of demolition and construction activities as "stages" conflating this term with the actual zoning process that plainly require First- and Second-Stage PUD zoning approvals. Its a devious sleight of language that cannot hide DCRA's impulsive and erroneous permit issuance. Further, DMPED's response in opposition to Appellants omits the fact that the overall McMillan Park "Master Plan" has yet to undergo Second-Stage zoning review and approval according to ZC Order No. 13-14(6). The Master Plan sets forth the full scope of the Applicant's demolition and construction activities for the proposed McMillan Park redevelopment project. Throughout all filings, Appellants have demonstrated that the Permits were issued prematurely without Second-stage zoning approval of the "Master Plan" and done so without legal justification by the Zoning Administrator, in error. This is a key fact and basis on which this appeal rests.

I, Chris Otten, attest to serving the above **APPELLANT'S EMERGENCY MOTION TO STRIKE DCRA'S JUNE 18, 2020 REPLY IN SUPPORT OF ITS MARCH 4, 2020 MOTION TO DISMISS THE APPEAL** on June 22, 2020, as follows:

RESPONDENT DCRA

Hugh.Green@dc.gov
Brendan.Heath@dc.gov
Matthew.Legrant@dc.gov
Esther.McGraw2@dc.gov

APPLICANT DMPED

Fernando.Amarillas@dc.gov
Andy.Saindon@dc.gov

Mayor Muriel Bowser,

By email: eom@dc.gov

Courtesy copies to all complainants:

Daniel Wolkoff <amglassart@yahoo.com>,
Cynthia Carson <cyncarson@gmail.com>,
Jerome Peloquin <aquaponikus@gmail.com>,
Linwood Norman <Linwood.norman@gmail.com>,
Melissa Peffers <mpeffs@gmail.com>,
Christof Rotten <crotten2@gmail.com>,
James Fournier <james.fournier@gmail.com>,

And by mail to:
Jimmie Boykin
2406 N Capitol St.
WDC 20002