

June 11, 2021

Frederick L. Hill, Chairperson  
Board of Zoning Adjustment  
441 4<sup>th</sup> Street, NW, Suite 200S  
Washington, DC 20010

**RE: BZA #20382, Joint Parties in Opposition, Motion to Postpone June 16, 2021 Hearing**

Dear Chairperson Hill and Honorable Members of the Board:

The parties in opposition jointly submit this motion to postpone because the Applicant's recent submission on June 9, 2021, submitted a week after our response and less than a week from the hearing, is materially different from its May 12, 2021 submission and from all its prior submissions.

The June 9, 2021 is the actual substantive submission that attempts to respond to the area variance concerns we raised prior to and during the April 14, 2021 hearing and to which the Board requested the Applicant respond by May 12, 2021. For the reasons provided below, the parties in opposition will be unfairly prejudiced if we are not given sufficient time to review and respond to the new submission—a substantive submission—and prepare for the hearing prior to the hearing.

**I. By submitting substantive changes on June 9, 2021 rather than May 12, 2021, a week after the parties' in opposition response and less than a week before the hearing, the Applicant circumvented the Board's decision to give the opposing parties adequate time to respond and therefore has unfairly prejudiced the parties in opposition.**

During the April 14, 2021 hearing, the Applicant asked for four weeks to address the area variance issue and other issues identified in our Motion to Strike. The Board granted the Applicant's request, allowing the Applicant to file their submission on May 12, 2021. The Board, presuming the Applicant's May 12, 2021 submission would address its concerns and the concerns raised by the parties in opposition, granted the parties in opposition three weeks to respond, by June 2, 2021. The Board also allowed the Applicant to file a reply on June 9, 2021 to address any new/additional issues identified in the opposing parties' response. In setting this calendar, the Applicant's attorney told the Board that he would need very little time to reply to the opposing parties' submission.

**Of key significance, the Applicant's May 12, 2021 supplemental submission failed to address the persistent concern raised as early as March 2021 of lot occupancy area variance and retained some of the misleading information objected to in our Motion to Strike, despite alleging that it has "no relevance" to this case. Rather than address the opposing parties' repeated concerns, the**

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Applicant's May 12, 2021 submission included minor, non-substantive revisions, and the Applicant took the full four weeks to make these minor changes.<sup>1</sup>

Then, on June 9, 2021, a week after opposing parties filed their response and less than a week before the hearing, the Applicant filed a completely different submission, and a new architectural proposal, foreclosing opposing parties' ability to adequately review the submission and prepare for the hearing. There is no apparent reason the Applicant could not have submitted these substantive changes by May 12, 2021, as directed by the Board, which would have provided the opposing parties sufficient time to prepare for the June 16, 2021 hearing.

Significantly, the Applicant cannot in good faith claim that his June 9, 2021 submission is a "response" to the opposing parties' June 2, 2021 submission. It is an entirely new submission. Our June 2, 2021 response largely reiterates the same issues raised in our May 12, 2021 Motion to Strike, which are many of the same issues we raised to the Applicant as early as March 2021. The Applicant's June 9 submission contains the most substantive changes to date that attempt to address the concerns repeatedly raised by the opposing parties well before May 12, 2021. It is prejudicial to the opposing parties to use the Board's June 9, 2021 response deadline to submit its most substantive submission—because it forecloses the opposing parties' ability to adequately review and prepare for the hearing.

Additionally prejudicial is the fact that weeks in advance of the Applicant's May 12, 2021 submission, we notified our experts to reserve time in their schedules so that we could consult with them on reviewing and assessing the Applicant's submission. Because the Applicant submitted material changes to the record less than a week before the hearing, our experts are not currently available to review and assess and advise us on the Applicant's June 9, 2021 submission and, therefore, we are significantly disadvantaged in preparing for the hearing.

Based on a preliminary assessment of the June 9, 2021 submission, but without the aid of our experts, it appears that some measurements still do not appear to match field conditions, lot coverage may still not have been calculated correctly, there is misleading information we objected to in our Motion to Strike, and the Applicant has made additional misleading statements. To prepare the hearing, we need time to review and assess this new information and whether we need to engage our experts, obtain affidavits showing the inaccuracy of the Applicant's information, complete a shade study based on the Applicant's new submission, and assess other impacts.

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<sup>1</sup> For example, the Applicant concedes that his revisions in the May 12, 2021 drawings are minor, describing the only notable change he made to the proposed 2-level garage as an "incorrect location of the footprints of the two adjoining accessory buildings in relation to the Applicant's proposed assessor building."

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**II. The Parties in Opposition respectfully request at least the same amount of time the Board originally granted us in which to review and assess the Applicant's June 9, 2021 submission and prepare for the hearing.**

The Applicant has had a total of eight weeks since the April 14, 2021 hearing to submit the response that it submitted on June 9, 2021. These past eight weeks do not include all the weeks prior to the April hearing during which the Applicant was aware of our concerns and yet failed to adequately respond—in March, and again in April and in May and on June 9, 2021. The Applicant's June 9, 2021 response continues to include misleading information the Applicant has submitted to other District officials. We respectfully request a minimum of at least the same amount of time the Board originally granted to the parties in opposition (May 12 – June 16) in which to review and respond to the Applicant's June 9, 2021 submission and prepare for the hearing.

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2021, an electronic copy of this response was served on the following:

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