

June 14, 2021

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

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

Dear Chairperson Hill and Honorable Members of the Board:

The parties in opposition jointly submit this motion to postpone the June 16, 2021 hearing 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 appears to be a 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 the new submission—a substantive submission—and prepare for the hearing, which will assess the June 9, 2021 submission, not the May 12, 2021 submission.

Further, this motion continues our objections to the issues, inaccuracies, and misrepresentations raised in our March 15, 2021 initial response, April 12, 2021 Motion to Strike, and June 2, 2021 response, which the Applicant has not yet addressed, corrected, or removed. This motion also requests the Board to strike the additional known misrepresentations in the Applicant's June 9, 2021 submission. Because we have not had sufficient time to review the June 9, 2021 submission there may be other inaccuracies that should be stricken.

Finally, the public notice posted at the Applicant's property incorrectly shows the hearing date as May 26, 2021. Given the significant neighborhood opposition (close to 40 neighbors object to the development) and the absence of neighborhood support, the posted notice with the incorrect hearing date is misleading and insufficient.

I. By submitting substantive changes on June 9, 2021 rather than on 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

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

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 April 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, 2021 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 the most substantive revisions to date—because it forecloses the opposing parties' ability to adequately review the submission 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 the Applicant's May 12, 2021 submission, which the Board intended to be the substantive 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, assess, and advise us on the Applicant's June 9, 2021 submission and, therefore, we are significantly prejudiced in preparing for the hearing.

¹ For example, the Applicant concedes that his revisions in the May 12, 2021 submission are minor, describing the only notable change he made to the drawings of 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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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 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 included additional misleading information. To be prepared for the hearing, we need time to review this new information and assess 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 other impacts.

II. The Applicant's June 9, 2021 submission contains inaccuracies that should be removed or corrected.

We reiterate the issues and objections identified in our March 15, 2021 initial response, April 12, 2021 Motion to Strike, and June 2, 2021 response that the Applicant has yet to address, correct, or remove. We have not had sufficient time to fully assess the Applicant's June 9, 2021 submission, but at this time we further object to additional misrepresentations in the Applicant's June 9, 2021 submission that the Applicant should correct or remove.

For example, the Applicant's June 9, 2021 architectural drawings misrepresent the "existing" basement square footage (the Applicant began a basement excavation, without the proper permits or notification, to extend the basement square footage, which DRCA halted with a stop work order July 1, 2020). The Applicant's June 9, 2021 submission also misrepresents that the principal building was a single dwelling unit "prior to the Applicant's purchase thereof" and that the Applicant intended to convert it "back" to a two-unit dwelling. Not only does this statement directly conflict with the Applicant's previous statements, it is incorrect because at the time the Applicant purchased the property last year and for nearly 30 years or more prior, the property was configured as two separate units, completely internally inaccessible from each other, and the separate basement apartment was occupied for decades by separate tenants.

These misrepresentations may be a sample. Although the Applicant has alleged and may continue to allege that such inaccuracies and misrepresentations "have no relevance" to *this* case, all inaccuracies and misrepresentations should be corrected, or, if they "have no relevance" to *this* case, they should be removed. Regardless of their relevance, the inaccuracies and misrepresentations continue to support inaccuracies and misrepresentations submitted to other District officials (e.g., HPRB, DCRA permitting, DCRA neighbor notification, ANC, DC Council, CHRS), which obfuscate the Applicant's actual scope of work already completed (beyond the scope of existing permits) and the Applicant's intended scope of work.

III. The Public Notice posted on the property includes the wrong hearing date of May 26, 2021 rather than June 16, 2021.

The public notice posted at the Applicant's property incorrectly shows the hearing date as May 26, 2021. There is significant neighborhood opposition (close to 40 neighbors object to the development) and no known neighborhood support. The posted notice with the incorrect hearing date is misleading and insufficient.

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IV. 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 the issues it attempted to address on June 9, 2021 and yet failed to adequately address 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, which we have not had time to sufficiently assess. Further, the public notice posted on the Applicant’s property erroneously identifies the hearing date as May 26, 2021 rather than June 16, 2021, and does not sufficiently notify the public and the neighbors (the majority of whom oppose the development) of the actual hearing date. 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 the Applicant’s June 9, 2021 submission and prepare for the hearing.

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2021, I, Darrin Howell, provided an electronic copy of this motion to the following:

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