

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington, D.C. 20001**

Appeal by Michael D. Hayes
Appeal by DuPont East Civic Action Assoc.

BZA Appeal No. 20452
BZA Appeal No. 20453

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS’S
OPPOSITION TO APPELLANTS’
DUPONT EAST CIVIC ACTION ASSOCIATION’S AND MICHAEL D. HAYES’S
JOINT MOTION TO REVISE SUBMISSION SCHEDULE**

NOW COMES, D.C. Department of Consumer and Regulatory Affairs (“DCRA”) for its *Opposition to Appellants’ Dupont East Civic Action Association’s and Michael D. Hays’s Joint Motion to Revise Submission Schedule*, states as follows:

Appellants Dupont East Civic Action Association (“DECCA”) and Michael D. Hays (“Mr. Hayes”) (collectively the “Appellants”) filed two separate appeals challenging the Zoning Administrator’s approval of a lot subdivision (Sq. 192, Lot 108).¹ The appeals were docketed in January 2021 (BZA Appeal 20453 on or about January 19, 2021; BZA Appeal 20452 on or about January 18, 2011). The Appellants have filed a *Joint Motion to Revise Submission Schedule* (the “Joint Motion”) requesting a change in the schedule for filing responses by parties. *See*, Joint Motion, pp. 4-5. The Appellants argue that the current schedule “does not provide adequate time for each Appellant to prepare the submission of the opposing parties.” *See*, Joint Motion, p. 4. However, the Joint Motion is overly vague and premature as no submissions have yet been filed by any opposing party in this case. Thus, it is unclear as to the precise basis of Appellants’ need for the additional time.

¹ BZA Appeal 20453 – Exhibit 2 Appellant’s Statement in Support; BZA Appeal 20452 –Exhibit 6 Statement of Appeal.

It is axiomatic that the party filing the appeal has the burden of proof. *See*, BZA 16947 *Appeal No. of Kuri Brothers, Inc.* (“the person alleging “that there is an error in any . . . decision”, D.C. Official Code § 6-641.07 (g)(1), must prove the error alleged. . .). Here, the Appellants have filed voluminous pages of material and tendered two (2) reports by their purported expert witnesses.² Further, these appeals have been pending since January 2021. Appellants must therefore be precluded from seeking additional time to “prepare their submissions” as they were required to provide complete submissions as required by Subtitle Y § 302.12. Moreover, pursuant to Subtitle Y § 302.13, an appeal may not be amended to add issues not identified in a statement of appeal. In this case, the Appellants’ request for further time to supplement their respective appeals is misplaced and impermissible under Subtitle Y § 302.13. Furthermore, the Appellants have already filed over 200 pages of material and their Joint Motion is bereft of any reason why they failed to file their supplemental material as required under Subtitle Y § 303.12(a)-(k).

More importantly, the Appellants’ Joint Motion, rather than granting further time to DCRA, actually shortens DCRA’s time to respond, without justification. Under Subtitle Y § 302.17, DCRA may file its responsive brief(s) to the appeals (7) days before the public hearing. *See*, Subtitle Y § 302.17. In this case, DCRA is permitted to file on or before May 5, 2021 as the BZA Public Hearing on these matters is set for May 12, 2021. The Appellants demand that DCRA file a response on April 30, 2021, several days earlier than required under the rules. Although the Appellants claim, without any basis, that the amended schedule is in the interests of justice and efficiency—it unfairly burdens DCRA in responding to multiple submissions by the Appellants earlier than required under the regulations. Therefore, DCRA requests that the Board deny the

² BZA Appeal 20453 – Exhibit 2-12; BZA Appeal 20452 –Exhibits 5 and 6.

Appellant’s Joint Motion and allow the DCRA to respond in the time permitted as currently provided for in the regulations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this March 17, 2021, a copy of the foregoing was served to:

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