BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeals of Michael Hays and Dupont East Civic Action Association

BZA Appeal Nos. 20452 & 20453
ANC 2B04

Perseus TDC, LLC's Opposition to Request to Intervene

Perseus TDC, LLC ("**Perseus**") hereby respectfully requests that the Board of Zoning Adjustment ("**Board**") deny the request to intervene ("**Motion**") filed by Wendy Schumacher. The reasons to deny Ms. Schumacher's request are simple: the Motion is being made over nine (9) months after this Appeal was filed; Ms. Schumacher has not met her burden to be granted intervenor status because her interests are more than adequately represented by the existing Appellants' spirited pursuit of this Appeal; and the openly stated motivation behind the Motion, as described in Ms. Schumacher's own filings, is to circumvent the Board's rules regarding timeliness. The Board should deny the Motion.

As recounted in prior submissions, the subdivision at issue in this Appeal was approved on November 19, 2020. The Appellants filed the Appeal on January 18 and 19, 2021. The Appeal was originally scheduled for hearing on May 12, 2021, was subsequently rescheduled to July 28, 2021, and then was rescheduled again to November 10, 2021. While the Board's rules establish 60 days as the period of limitations for exercising one's right to object to a subdivision based on zoning, Ms. Schumacher has waited no less than 341 days (over eleven (11) months or over five and a half times the limitations period) in order to raise her objections to the approved subdivision.

Furthermore, Ms. Schumacher has not demonstrated that she qualifies to participate in the case as an intervenor under the Board's rules. To prevail on her Motion, Ms. Schumacher bears the burden to demonstrate that she "has an interest that may not be adequately represented by the

automatic parties." 11-X DCMR § 501.3. Ms. Schumacher has not made such a showing here. Rather, her Motion revolves entirely around whether the approved Temple lot satisfies rear yard requirements. The application and interpretation of the Zoning Regulations provisions related to rear yards permeates the Appellants' zoning arguments in this case, and the Appellants' filings have shown quite clearly that they will continue pursuing these arguments with vigor. The only interest and argument Ms. Schumacher's filing conveys is in having the subdivision reversed based on an alleged non-compliant rear yard. There is no reason to believe that the Appellants will not continue to litigate this issue with equal or greater zeal than would Ms. Schumacher and, thus, she cannot demonstrate that her interests are not already adequately represented.

Moreover — and more problematic — the Motion is fully transparent that the purpose of seeking intervention is to attempt to bypass the Board's rules regarding timeliness in order to ferry in one of the Appellants' arguments — that the subdivision violates the provisions for structures located in required open spaces under Subtitle B § 324.1 — that the Appellants themselves were egregiously late in raising. In no uncertain terms, the Motion states: "If the existing parties did not timely raise this issue . . . then they did not and do not adequately represent my interests." Motion at 7. But the rules permitting intervention do not exist to provide an end run around timeliness. If Ms. Schumacher believed that the subdivision violated Subtitle B § 324.1 and had a genuine concern that her interests would not be adequately represented, she could have acted to protect those interests by filing an appeal herself any time during the 60-day period set forth in the Board's rules, or — being even more generous than the rules — once she noticed the absence of this issue in the Appellants' filings she could have registered her wish to participate in this case at some earlier time during the intervening nine (9) months since the Appeal was filed, during which two previously scheduled hearing dates have

come and gone. Rather than do so, Ms. Schumacher opted not to exercise her rights. The Board should not permit her to now join in the case at this late stage simply so she can raise an untimely claim which she has had every opportunity to raise before now.[1]

For all the reasons discussed above, Perseus respectfully requests that the Board deny the Motion.

Respectfully Submitted,

/s/
Christine A. Roddy

/s/
Lawrence Ferris

/s/
Lee Sheehan

[1] In any event, as discussed in prior filings, the wall at issue does not result in a non-compliant rear yard because it is permitted under the exceptions set forth under Subtitle B § 324.1. And even if the wall is required to be factored into the rear yard calculation, per Subtitle B § 318.2 the rear yard is measured as the mean horizontal distance between building line and the rear lot line (i.e., the average measurement across the entirety of the lot), and the wall — at only three (3) feet, four (4) inches wide — would have a *de minimus* impact on the rear yard calculation and would not result in non-compliance.

Certificate of Service

The undersigned hereby certifies that copies of the foregoing documents were delivered by electronic mail to the following addresses on November 2, 2021.

Matthew LeGrant, *Zoning Administrator*
Office of the Zoning Administrator
Department of Consumer and Regulatory Affairs
matthew.legrant@dc.gov

Hugh J. Green, Esq., *Counsel for DCRA*
Office of the General Counsel
Department of Consumer and Regulatory Affairs
hugh.green@dc.gov

Michael D. Hays, *Appellant in Case No. 20452*
michael.hays@comcast.net

Edward V. Hanlon, *Representative of Appellant in Case No. 20453*
Dupont East Civic Action Association
ed.hanlon.3@gmail.com

Andrew Zimmitti, *Counsel for Supreme Council of the Scottish Rite of Freemansory, 33rd Degree, Southern Jurisdiction, USA*
Manatt, Phelps & Phillips, LLP
azimmitti@manatt.com

Moshe Pasternak, *Single Member District Representative for ANC 2B04*
2B04@anc.dc.gov

Wendy Schumacher
wendysindc@gmail.com

/s/
Lawrence Ferris