

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

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

BZA Appeal No. 20452  
BZA Appeal No. 20453

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS’  
PARTIAL CONSENT MOTION *IN LIMINE* TO EXCLUDE TESTIMONY  
OF MICHAEL D. HAYS**

The D.C. Department of Consumer and Regulatory Affairs (“DCRA”), by and through counsel, and for its *Motion in Limine to Exclude Testimony of Michael D. Hays*, states as follows<sup>1</sup>:

DCRA moves to bar irrelevant testimony *in limine*. The Board of Zoning Adjustment (the “Board”) has the power to limit or exclude irrelevant testimony under 11 DCMR Subtitle Y § 506.1(e). Upon information and belief, Appellant, Michael D. Hays (“Mr. Hays”) intends on proffering his own testimony regarding purported the harm as a result of the subdivision.<sup>2</sup>

Specifically, Mr. Hays intends on testifying as to how he is “aggrieved by the approval of the subdivision.”<sup>3</sup> Mr. Hays states that he will purportedly suffer some *future* harm (“I will suffer harm from the construction that the subdivision permits”).<sup>4</sup> However, the Board has excluded such witness testimony in zoning appeals, and limits testimony only to the zoning issues. *See, e.g., BZA Appeal No. 20183 The Residences of Columbia Heights a Condominium* (granting DCRA’s motion *in limine* barring testimony regarding alleged injury, and limiting testimony to alleged zoning errors).<sup>5</sup> Moreover, Mr. Hays has not demonstrated that he has any zoning experience or technical expertise which will assist the Board in determining the issues. *Assuming arguendo* that Mr. Hays’

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<sup>1</sup> On July 2, 2021, DCRA received consent from the Motion from counsel for Lessee Persus TDC (via e-mail). DCRA did not receive a response to the request from either Michael D. Hayes or DuPont East Civic Action Assoc.

<sup>2</sup> BZA Appeal 20452 Exhibit 6 – Statement of Appellant Michael Hays in Support of Appeal, p. 7.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> BZA Appeal 20183, Public Hearing Trans. Feb 26, 2020, pg. 99.

testimony is relevant to a zoning appeal—which it is not—it is unclear as to how the approval of the lot subdivision itself has any bearing on the alleged harm(s). Accordingly, Mr. Hays’ purported testimony must be excluded under Subtitle § 506.1(e).

WHEREFORE, DCRA respectfully requests that the Board grant its Motion and bar in *limine* any and all testimony from Mr. Michael D. Hays, or any other potential witness, regarding the alleged injuries as the result of the subdivision;

Respectfully submitted,

/s/ Esther Yong McGraw

ESTHER YOUNG MCGRAW

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**CERTIFICATE OF SERVICE**

I certify that on this July 2, 2021, a copy of the foregoing was served to:

**Via Electronic E-mail**

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