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March 16, 2021

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

Re: BZA Application # 20594

Dear Chairman Hill:

This is a request for a postponement of the hearing in the above-referenced application, now set to be heard by this Board on April 13, 2022, by Mary Lee, an abutting landowner, who has been granted leave to appear as a party in opposition to the above referenced variance application.

The hearing in this case scheduled for March 3, 2022 was re-scheduled to April 13, 2022, after Ms. Lee requested a postponement based on, among other things, the inadequate and incorrect public notice provided for the hearing. During the hearing on March 3, 2022, the Applicants' counsel assented to the postponement and represented that they would correct any errors in the public notice prior to the re-scheduled hearing.

No corrected meeting notice was ever filed. Instead, on March 2, 2022, the Applicant emailed the three opposing parties a revised "statement of the applicant." No certificate of service was attached to the revised statement, in violation of the zoning regulations, 11 DCMR §§ Y-205.4; 300.11. Instead, the email from the Applicant advised that all attachments were available via IZIS.

Apparently, revised public notices were sent by the D.C. Office of Zoning to the D.C. Register, a variety of public agency and public officials, and to neighbors within 200 feet of the development, on March 2 and March 11, 2022. *See* BZA Exhibits 79 and 81. However, Ms. Lee has not yet received this notice. IZIS does not provide a copy of the public notice that was circulated. This notice has not yet appeared in the D.C. Register. Therefore, neither the commenting agencies nor the opposing parties have received adequate notice of the nature of the relief now being requested by the Applicant.

Most importantly, the Applicants' recent submission attempts to insert a completely new application for a different type of relief in the guise of a supplemental submission. This is not a minor change. The previous application was for several lot dimension variances and this new application is for a theoretical subdivision which requires a review of numerous types of

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development plans by both DC agencies and affected parties. Some of these plans were submitted by the applicant previously but the parties understood that they were not legally binding or relevant to previously requested lot dimension variances and as a consequence they were not focused on reviewing the plans. Notwithstanding this, a current very cursory review of what was submitted previously and the recently submitted plans. indicates a number of changes to House # 1, including an increase in the footprint of house and a relocation of the pool into the rear yard setback. Further, the new landscaping plan filed by the Applicant also provides significantly less landscaping than was indicated in the prior plans calling into question the Applicant's credibility based on prior representations to the community regarding the extent of the landscaping he was willing to do on the site. The revised architectural plans require new reviews by the various commenting agencies. Yet applicant misleadingly continues to cite prior letters by agencies based on their review of the prior plans.

The public notice supplied in the IZIS case file is also insufficient. This public notice reflects only an application for a special exception for a theoretical lot subdivision under Subtitle C § 305. However, the Applicant also needs a waiver from the requirements C-302.1 (lot width), and has requested, in the alternative, a variance. This requested waiver and variance are nowhere referenced in the Applicant's revised statement. The Zoning Regulations specifically require the public notice include "the citation to the legal authority pursuant to which the application is being filed" and "the nature of the proposed zoning relief." 11 DCMR Subtitle Y § 402.2. "If the Board finds a failure or defect in the notice of public hearing, the Board shall determine whether to postpone, continue, or hold the public hearing" based on various considerations, including "[t]he nature and extent of construction and/or use proposed under the application." *Id.* Subtitle Y § 402.11. In this case, the radical change in the nature of the zoning relief requested by the Applicant is a significant change for which the public should be afforded the full and accurate notice.

Finally, the Applicant has indicated that they desire to enter into discussions with my client in an effort to discuss and possibly resolve Ms. Lee's concerns. The Applicant has yet to initiate any such discussion. However, my client is and remains willing to engage in such a discussion, provided that the hearing be postponed. There is simply insufficient time between now and April 13<sup>th</sup> to review the new plans and prepare for the upcoming hearing at the same time.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Ferster', with a stylized flourish at the end.

Andrea C. Ferster

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I hereby certify that, on March 16, 2022, a copy of the foregoing Request for a Postponement was served by email on the following:

Paul Harrison, Applicant  
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