

February 8, 2022

Via JZIS

Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210S
Washington, DC 20001

Re: Applicant's Response to Party Status Opposition - BZA Case No. 20615 (751 10th Street, SE)

Dear Members of the Board:

On behalf of the applicants (collectively, the "Applicant") in BZA Application No. 20615, this is a brief response to the Party Opponent Applicant's ("Opponent") multiple filings in opposition to the Application. The Applicant has asked for the opportunity to file this brief submission late, due to the Opponent filing its substantive argument and evidence six (6) days late and one (1) day prior to the Applicant's February 2 filing deadline.

The Applicant is not contesting party status but does wish to provide a brief response to the Opponent's submissions and will address these issues in more detail at the hearing on February 9.

Opponent claims and/or implies several arguments, all of them falling well short of justifying anything but approval of the Application. We briefly address these below. While Opponent's subject windows are at-risk openings, it is not critical for the Board to consider that aspect of this case. Even absent the at-risk window situation, there is no substantial adverse effect to Opponent in granting the requested relief.

1) Timing. Opponent implies that because their building was constructed prior to the Applicant's building, it is perpetually entitled to the light and air from the Applicant's currently open side yard, despite being in a row house district. First, the premise isn't even accurate. The Applicant's building was noted in the Historic Preservation Staff Report as appearing in an 1874 real estate directory (HPO Staff Report attached), which debunks the (irrelevant) claim that the Applicant's house was designed as an accommodation to the Opponent's building. Second, there is no first-to-build exception for at-risk windows. If that was the case, then there would be no such

thing as at-risk windows. Essentially, Opponent has enjoyed the benefit of the light and air from its neighboring property for over 100 years and it wishes this free easement to continue unabated.

2) Affordability. We do not believe that Opponent's building is enrolled in the District's Inclusionary Zoning program or any other officially "affordable housing" program. Even if it was, that would not have anything to do with the Board's evaluation of the special exception criteria in this case.

3) Economic Impact. Opponent claims a "huge economic impact" on them, as property owners. The relative impact on them is minimal to nonexistent, as noted in Applicant's shadow studies, and Opponent's misleading/uninformative shadow studies do not prove otherwise. Moreover, the Zoning Commission has noted in the past that "the view sheds and property values of [opponents] are not protected...by the Zoning Regulations."¹

4) Accommodation. Despite Opponent's at-risk openings not being protected by the BZA, Applicant redesigned its addition to mirror the Opponent's court openings, in response to initial concerns expressed by ANC 6B. ANC 6B then voted 9-1 to support the Application.

5) Accessory Building. Any impact that the accessory building would have on Opponent's building is primarily a result of the location of Opponent's building, which is a 4-story building with an approximate lot occupancy of seventy-five percent (75%), including very large rear decks overlooking the adjacent properties.

We will provide more detail on these issues in the hearing. Thank you for your consideration.

Respectfully Submitted,

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¹ From BZA Order No. 18787: In any event, this Board has found on a number of occasions that "it is well settled in the District of Columbia that a property owner is not entitled to a view across another person's property without an express easement. *See* BZA Order No 18330 (*quoting Hefazi v. Stiglitz*, 862 A.2d 901, 911 (D.C. 2004)); *see also* Z.C. Order No. 12-02 (stating that "a property owner is not entitled to a view, light, or air across another person's property without an express easement, and a property owner has no right to a view across another person's property... The Commission finds that the view sheds and property values of [the opponents] are not protected by any restrictive covenants or by the Zoning Regulations").

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2022, an electronic copy of this submission was served to the following:

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