

Lyle M. Blanchard., Esq.
LMB @ gdllaw.com

January 26, 2022

BY IZIS

Mr. Frederick L. Hill
Chairperson
Board of Zoning Adjustment
One Judiciary Square
441 4th Street, N.W.
Suite 210 – South
Washington, D.C. 20001

Re: BZA Application No. 20615
751 10th Street, SE,
Square 950, Lot 84 (“751 Property”)

Dear Chairperson Hill and Members of the Board:

This firm is counsel for Robert McCulloch, Jr. and Margaret McCulloch, the owners of the nine unit apartment building constructed in 1912 at 747-749 10th Street, SE (Square 950, Lot 53) (“749 Property”). As authorized by the attached Agent Authorization letter, the undersigned respectfully submit the Form 140 Party Status Request in OPPOSITION and supporting information set forth below.

The 749 Property is immediately abutting the semi-detached single-family dwelling at the 751 Property owned and occupied by Thomas Picarsic and Katherine Kuzma.

The proposed redevelopment and expansion in occupancy of the 751 Property cannot be viewed in isolation from the 749 Property. The 749 Property was constructed in 1912 and includes two original courts that face south toward the 751 Property. The 751 Property was built later in 1937 and its design and construction respect and accommodate our client’s building by providing a five feet six inch (5’ 6”) side yard that provides light and air to the 749 Property’s courtyards. Our client’s 749 Property provides below market affordable housing.

Our client’s family has rented below-market apartments at 747-749 10th Street, SE for the last 50 years, ever since their father purchased the building in 1971. They oppose the proposed project next door at 751 10th Street, SE, because it will forever compromise the quality of housing available at their historic apartment building. The effect of this project on their tenants and their day-to-day lives will be dramatic. There will also be a huge economic impact on our clients as property owners. The rates of apartment vacancy and tenant turnover will surely increase, because no one will want to rent apartments that lack natural light and fresh air.

Board of Zoning Adjustment
District of Columbia
CASE NO. 20615
EXHIBIT NO. 34

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The special exceptions that the Picarsics are asking for are not theirs by right, and they should not be granted. The BZA exception criteria are clear - the impacts on the McCullochs and their tenants, as the adjacent neighbors, actually matter.

The 70-foot south wall of our client's building contains two original courtyards, which face the neighbors' side yard. With the existing side yard, these courtyards provide ample airflow and sunlight to the middle rooms of the five apartments on the southern side of the building. Eliminating the existing side yard and enclosing the courtyards with 22-foot high walls will drastically impact light and air to 18 windows, in a 120-year-old building that does not have central air conditioning. Four out of the nine units in the building will be dramatically affected – they will permanently lose a significant portion of their light and air. The below-ground windows of the two basement units will be most significantly impacted, as they will go from having significant ambient (and some direct) sunlight to looking straight up into a 28-foot tunnel. (See Exhibit A – Photographs.)

Any by-right project would need to maintain a three feet side yard between the buildings. If our client's neighbor were to maintain the required side yard of three feet, the effect on the units would be far less, even if they built a third story. We contend that the Applicant should reconfigure its design to extending into the amply rear yard and pulling back to preserve the side yard to address our client's concerns.

The burden of proof for the neighbor's special exception requires that the light and air to the 749 Property will not be unduly affected because there's already a 6-foot privacy fence along the property line. But to compare a 22-foot wall to a 6-foot wooden fence with gaps between the boards is ridiculous. Additionally, the Applicant's bird's-eye-view sun study, rendering tiny depictions of sunlight and shadows, does nothing to capture the huge loss of ambient light to our apartments.

In addition to our client's concerns about the side yard issue, the Applicant proposes a massive two-story accessory building that will cast huge shadows on the 749 Property's rear yard and rear porches. The proposed accessory building will span the entire length of our client's rear yard, right up to the rear porches. It raises very real privacy concerns, with its second-story windows just feet from where tenants sit on their rear porches.

The criteria for the special exceptions are the impact on adjacent property's air, light, use, and enjoyment. This is not about whether the neighbor deserves it, or anything to do with the footprint that they're working with, or if similar projects have gone through elsewhere. The proposed project will have a substantially adverse impact on our client's and their tenants' use and enjoyment of the 749 Property. Especially, recently the tenants by and large work from home. They spend much of their time at home in their apartments and, weather permitting, on their rear sun porches, and in their sunny communal back yard.

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The following impacts cumulatively add up, and together they unduly and substantively impact the tenants' use and enjoyment of their apartments:

1. **The proposed rear addition and accessory building substantially visually intrude upon the unique charm, character, look, and feel** of the light and airy interior, and the rear porches and yard, of the historic apartment building from 1912.
2. **There is a loss of spaciousness and openness.** This is about aesthetics, the look and feel, the spaciousness that the tenants enjoy. They don't just lose the views that they love, they "gain" huge twenty-two-foot brick walls encroaching right on top of them, both within their apartments, and in the rear porch and the communal yard. While typical row houses are often limited to their front windows and back windows for light and air, one cannot simply equate a single-family row home to a 70-foot-deep apartment building with multiple bedrooms, dining rooms, and bathrooms located in the middle of the building. Our client's building is substantially deeper, taller and has far more rooms than a single-family home, and the original, unenclosed courtyards play a huge role in giving the apartments an aesthetic sense of spaciousness and openness that will be lost if the courtyards are bricked in.
3. **The light will be unduly affected.** As mentioned previously, the proposed extension and accessory building will indeed impact direct and ambient sunlight on an extensive part of our backyard and porches, as well as the eighteen windows on the south façade. Because there is a southern exposure for the courtyards, this project will significantly block sunlight from noon through sunset, every day, all year-round. The most extreme impact will be in winter, when people often suffer seasonal depression and light is most precious. The project will greatly diminish the enjoyment of the apartments, rear porch, and shared back yard. If the Applicant maintains the existing side yard, there would only be a negligible loss of light. As it stands, multiple apartments will go from being full of light and airiness to being cave-like.
4. **Loss of fresh air: The airflow will be unduly affected, especially to the basement units.** The bedrooms, bathrooms, and kitchens of the two basement units will go from currently having fresh air, from directly above, to instead looking up into a stagnant twenty-eight foot tunnel with no fresh airflow. Similar effects will be had on the air in multiple rooms in the first and second-floor units, which rely on the open courtyards for cross-breezes.

The cumulative impact of all of these negative effects on our client's apartments add up to a "substantial and undue" impact.

We will be calling Mr. Stephen duPont, Jr., RA as an expert witness. His resume is attached as Exhibit B. Mr. DuPont is working on a sun study, which is not yet complete and will be filed as soon as possible. Finally, we expect to hear from our client's tenants, Zoe Bluffstone, Melissa Lawall, Mira League-Hankins and Georgia Weingarten who will each be testifying as persons in opposition.



GREENSTEIN DELORME & LUCHS, P.C.

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At the public hearing, we request not less than fifteen (15) minutes for presentation, including testimony from Mr. Robert McCulloch, Ms. Margaret McCulloch and Mr. DuPont.

Thank you for your assistance.

Sincerely,

GREENSTEIN DELORME & LUCHS, P.C.

By:

Lyle M. Blanchard

By:

John Patrick Brown, Jr.

Enclosures

cc: Jennifer Fowler, jennifer@fowler-architects.com
ANC 6B, 6B@anc.dc.gov
Kirsten Oldenburg ANC 6B04, 6b04@anc.dc.gov
Karen Thomas, OP, karen.thomas@dc.gov
Aaron Zimmerman, DDOT, aaron.zimmerman@dc.gov



**BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA**



FORM 140 - PARTY STATUS REQUEST

Before completing this form, please go to www.dcoz.dc.gov > IZIS > Participating in an Existing Case > Party Status Request for instructions. Print or type all information unless otherwise indicated. All information must be completely filled out.

PLEASE NOTE: YOU ARE NOT REQUIRED TO COMPLETE THIS FORM IF YOU SIMPLY WISH TO TESTIFY AT THE HEARING. COMPLETE THIS FORM ONLY IF YOU WISH TO BE A PARTY IN THIS CASE.

Pursuant to 11 DCMR Subtitle Y § 404.1 or Subtitle Z § 404.1, a request is hereby made, the details of which are as follows:

Name:	Robert McCulloch, Jr. and Margaret McCulloch		
Address:	747-749 10th Street, SE, Washington, D.C. 20003		
Phone No(s):	(202) 550-7286	E Mail:	mcproperties@gmail.com

I hereby request to appear and participate as a party in Case No.:	20615
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Signature:		Date:	01/26/2022
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Will you appear as a(n)	<input type="checkbox"/> Proponent	<input checked="" type="checkbox"/> Opponent	Will you appear through legal counsel?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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If yes, please enter the name and address of such legal counsel.

Name:	John Patrick Brown, Jr. and Lyle M. Blanchard		
Address:	Greenstein DeLorme & Luchs, P.C. - 801 17th Street, N.W., Suite 1000, Washington, D.C. 20006		
Phone No(s):	(202) 452-1400	E Mail:	jpb@gdllaw.com, lmb@gdllaw.com

ADVANCED PARTY STATUS CONSIDERATION PURSUANT TO: Subtitle Y § 404.3/Subtitle Z § 404.3:

I hereby request advance Party Status consideration at the public meetings scheduled for:	N/A
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PARTY WITNESS INFORMATION:

On a separate piece of paper, please provide the following witness information:

1. A list of witnesses who will testify on the party's behalf;
2. A summary of the testimony of each witness;
3. An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts; and
4. The total amount of time being requested to present your case.

PARTY STATUS CRITERIA:

Please answer all of the following questions referencing why the above entity should be granted party status:

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board? **Please see attached letter.**
2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee) **Please see attached letter.**
3. What is the distance between the person's property and the property that is the subject of the application before the Commission/Board? (Preferably no farther than 200 ft.) **Please see attached letter.**
4. What are the environmental, economic, or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied? **Please see attached letter.**
5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied. **Please see attached letter.**
6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public. **Please see attached letter.**

Margaret A. McCulloch and Robert F. McCulloch Jr
1227 E Street, S.E.
Washington, DC 20003

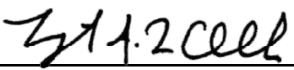
January 24, 2022

Board of Zoning Adjustment
Government of the District of Columbia
One Judiciary Square
441 4th Street, N.W., Suite 210S
Washington, DC 20001

Re: BZA Application No. 20615
751 10TH Street., S.E.
Square 950, Lot 84

Dear Members of the Board:


Please be advised that we, as the owners of 747-749 10th Street, S.E., hereby authorize the law firm of Greenstein, DeLorme & Luchs, P.C., as authorized agent ("Agent"), to represent us in any proceedings related to the above-referenced BZA Application.

By: 
Margaret A. McCulloch

By: 
Robert F. McCulloch Jr.

The Agents have read the BZA's Rules of Practice and Procedure (11 DCMR, Subtitle Y) and are able to competently represent the Owner.

Greenstein DeLorme & Luchs, P.C.

By: 
John Patrick Brown, Jr., Esq.
Agent

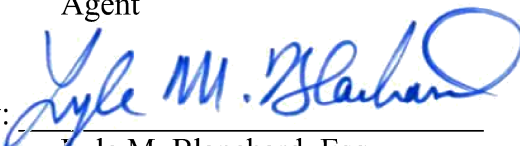
By: 
Lyle M. Blanchard, Esq.
Agent

EXHIBIT “A”

Apartment #3 Office



Apartment #3 Dining Room



Apartment #3 Bedroom



Basement Apt #A Bedroom



Basement Apt #A Bathroom



Basement Apt #C Bedroom



A photograph taken from inside a room, looking out through a window. The window has a white frame and a white mesh screen. Outside, a brick building is visible, with a white ledge or balcony in front of it. The sky is bright. In the foreground, the top of a black cat's head and its ears are visible, looking out the window. The text "Basement #C Bedroom (cat at window)" is overlaid in yellow on a black background across the middle of the image.

Basement #C Bedroom
(cat at window)

EXHIBIT “B”

Stephen duPont, Jr. RA NCARB

professional April 1998 to present,

practice: **SdPRA**

Responsible for all major functions. Involved in marketing, design and construction management activities for commercial and residential projects up to \$5,000,000.

Architect

Portico, Arlington, Virginia

January 1995 to April 1998

Responsible for all design/build marketing, design and construction management activities for mostly residential projects of up to about \$1,000,000.

Principal

Ohi-duPont Corporation, Arlington, Virginia

October 1991 to 1993,

Responsible for all major functions. Involved in marketing, management and construction activities for commercial and residential projects up to \$350,000.

Principal

duPont & Associates, pc, Arlington, Virginia

July 1990 to 1995.

Responsible for all major functions. Involved in marketing, design and construction management activities for commercial and residential projects up to \$1,000,000.

Principal

The Dennehy duPont Partnership, pc, Arlington, Virginia

January 1988 to July 1990.

Shared responsibility for all major functions. Primarily involved in marketing, design and construction administration activities for commercial and residential projects up to \$800,000.

Project Architect/Project Manager

David M. Schwarz/ Architectural Services, P.C., Washington, DC

March 1983 to January 1988.

Project Architect and Project Manager responsibilities, including primarily Design and Construction Administration for projects up to \$15 million.



Architect

Richard Stauffer Associates, Washington, DC October 1982 to March 1983.

Architect

Davivienda, S.A., Quito, Ecuador

October 1981 to December 1981.

Design team member for a ten story office building in Guayaquil and a vacation house in Panama.

Owner and Licensed Contractor

DFA Design Build, Philadelphia, PA & Washington, D.C.

September 1976 to July 1981.

Design/Build functions including primarily construction and detailing for numerous residential projects.

education: Master of Architecture, 1976

University of Pennsylvania

Philadelphia, Pennsylvania

Bachelor of Fine Arts, 1973

University of Pennsylvania

Philadelphia, Pennsylvania

registrations: District of Columbia 1984: A3727

Virginia: 14028

Maryland: 16100

NCARB: 41616

licenses: DC Home Improvement Contractor, 1977 - 2000

Maryland Home Improvement Contractor #72727, 1999 - 2003, inactive until 2005

invited jury experience: University of Maryland, School of Architecture

awards: National Ornamental and Miscellaneous Metals Association

Designer, Partner in Charge "Executive Quarters, Inc." The Dennehy duPont Partnership, P.C.

Best Stair of 1989 - First Prize

Masonry Institute Competition

Design Team (Project Architect) "The Penn Theatre Project" David M. Schwarz/ Architectural Services, P.C.
Award for Excellence

AIA Citation for Excellence

"Hamilton Court"

Design Team: Richard Stauffer Associates

other activities: The Hospital for Sick Children, Washington, DC
Member Board of Directors
Chairman, Master Planning & Building Committees

Palisades Citizens Association, Washington, DC

Member Board of Directors Chairman, Zoning Committee

Federation of Civic Associations, Washington, DC

Alternate Delegate from PCA, Affordable Housing Committee

Marshhawk Hollow, Block Island

Comprehensive land-use planning and land development leadership role for 30 acre tract of Conservation and Affordable Housing, abutting and adding a critical link to a 400 acre Greenway.

The Greater Washington Board of Trade, Wash., DC

DC Development Committee Shops/Retail Overlay Subcommittee Housing Linkage Committee

representative

project experience: Land Development

15th Pl., SE: 64,000 sq ft of undeveloped land- current project

This is a larger tract that will ultimately involve about 45 dwellings. It is a very difficult site involving steep slopes and is in very preliminary stages.

Mixed Use: Office & Multi-Family Housing; Retail and Medical Offices

419/423 Kennedy St., NW- 30,000(+) sq ft

A current project, a new building with about 32 apartments and several thousand sq ft of commercial space.

4424 Georgia Av., NW, Washington, DC- 7750 sq ft

A new mixed use building with seven apartments of varying size and configuration and a two story commercial component.

3110 Georgia Av., NW, Washington, DC- 18,000 sq ft

A new 17 unit apartment building with a commercial component; this project includes underpinning and affordable housing.

Block 13, Brentwood, MD; A new construction "Podium" building with 6 apartments and some office spaces above about 10,000 sq ft of commercial/light industrial space.

Penn Theatre/PennMark Condominium, Washington, DC - 170,000 sq ft

Two new buildings with underground parking, 30,000 sq ft of offices, retail space and 35 apartments. Office component involved design of medical suites for several tenants.

1513 Wisconsin Av., NW; Washington, DC; Addition to an existing antique building in the Georgetown Historic District subject to review and approval by the US Commission of Fine Arts.

Multi-Family Housing

906 Gallatin St., NW & 5024 9th St., NW

Gut and rebuild of two identical 15 unit buildings, three floors plus a basement, including new water and electrical service.

1258 Holbrook Terrace, NE, Washington, DC- 11,500 sq ft

A new eight unit apartment house. This project includes underpinning and complex stormwater management.

**Rosemont Commons, 401 Commonwealth Ave.,
Alexandria, VA**

This 18 unit apartment building in Alexandria had not been significantly renovated since it was built in the early '30s. Working with Scot Engineering, we provided a design to largely gut and reconfigure the building for condominiums.

Hampshire House Condominium

Over the years we have created two new apartments out of four, gutted and remodeled a third, and redesigned the main lobby. Most of the contracting for these projects in this 60 unit DuPont Circle building was performed by our firm, as well.

1210 Queen St; Alexandria, VA

Conversion of 1905 warehouse to 8 apartments; required underpinning of entire structure and addition of another floor. Project includes a green roof and is the first LEED condo in Virginia, the first LEED building in Alexandria.

Single Family Housing

**Maple View Pl., SE: four new homes with accessory
apartments- a current project**

These homes will be about 3000 sq ft each. The project involved a fairly complicated zoning case, where we prevailed.

Cromley Row, Alexandria, VA; Five new attached town houses in the Parker Grey Historic District in Old Town Alexandria

**1217, 19, 21 Queen St; 311 & 313 Fayette St; 1 & 2
Cromley Alley; 214-A Pitt Alley; 5 new homes on
Columbus St;**

these are several new home developments in Old Town Alexandria in the Parker Grey Historic District.

800 East Capitol St., NE; 600 G St., SE; these two projects are conversions of free standing 19th century structures which were originally built as single family homes, then

converted over time to 8 and 9 apartments. Our project returned each to single family with two accessory apartments.

Retail

Up roar Restaurant, 639 and 641 Florida Av., NW- expansion of a rooftop bar to the neighboring building
This project is currently in construction.

TugooH Toys, 1419 Wisconsin Av., NW, Washington, DC
Renovation of small (1000 sq ft±) retail space.

TugooH Toys, 1319 Wisconsin Av., NW, Washington, DC
Conversion of Betsy Johnson store for TugooH Toys use including plan, casework, interior design.

TugooH Toys, Bethesda Ave., Bethesda, MD 20814 - 1800 square feet

Design of a new store in the heart of new Bethesda. Also responsible for contracting and construction of the storefront.

1426 Wisconsin Av., NW, Washington, DC

Gut and rebuild a three story building in Georgetown, including five apartments and a third floor addition.

Say Cheese

1132 29th St ., NW, Washington, DC- 900 sq ft

This is a tiny sandwich shop with too much equipment for the space.

Wisey's Restaurant

Wisconsin Ave., NW; Washington, DC; expansion of restaurant to 2nd floor; design for Zoning approval and Building Code modification.

Hot Yoga Studio, Crystal City, VA; 5000 sq ft

design including all mechanical, electrical and plumbing for a multifaceted facility including locker rooms, a hot yoga studio, pilates, sauna and retail.

637 and 639 Florida Av., NW

Gut and renovation of two buildings near Howard University, including additions to each and design of roof deck additions. Design of restaurant facade for 639.

Anacostia Market

Renovation of an old Safeway supermarket into retail and medical spaces; owner's representative for construction; 37,500+ sq ft land, 15,000± sq ft building.

Medical Offices

OBGYN Offices

Renovation of two story office suite in Alexandria, VA for use as offices and exam rooms by an Obstetrics and Gynecology practice.

Embassy

Residence of the Ambassador from Pakistan

Design/Build renovation of the early 20th Century 15,000 sq ft masonry structure in Embassy Row off Massachusetts Av., NW.

Embassy of Pakistan

Design of Renovation of two Embassy owned properties and Owner's Representative for construction- the old Embassy building and the old Chancery, significant early 20th Century buildings in the Historic District severely damaged by time and water intrusion.