

July 1, 2024

**Via JZIS**

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

**Re: Applicant's Response to the Motion to Strike - BZA Case No. 21157 – 3428 O Street, NW**

Dear Chairperson Hill and Members of the Board:

The Applicant respectfully submits this response to Ms. Roth's "Motion to Strike Applicant's Video Submission" (the "Motion to Strike"). The rebuttal photo evidence provided, and the corresponding video evidence yet to be provided, along with the authenticating testimony provided by Mr. Dana and Mr. Itteilag, is admissible evidence. The subject evidence is directly relevant to the issues under consideration in this case. According to the District of Columbia Administrative Procedure Act (D.C. Code § 2-509(b)), evidence is admissible if it is relevant and material to the proceeding.<sup>1</sup> The subject evidence meets these criteria, as it provides information pertinent to the Board's evaluation of the Application.

Ms. Roth has submitted photographic evidence of two specific overflowing trash cans, to further an argument that Call Your Mother's operations are responsible for that condition. For this reason, the evidence of Ms. Roth contributing her own personal trash to those same trash cans is certainly relevant, both to rebut the claim that Call Your Mother is responsible for a deleterious trash situation, as well as to impeach the credibility of both her and her submitted evidence.

The Motion to Strike offers no legal basis for the exclusion of the subject evidence. Although Ms. Roth does claim at one point that the subject evidence is "clearly absolutely irrelevant and only entered into the record to try to discredit me," she offers no support for such a conclusion. The evidence of her directly contributing to a condition that she claims is due to the operations of Call Your Mother is clearly relevant. Also, the fact that the evidence tends to discredit her does not in and of itself make it excludable.

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<sup>1</sup> Section Y-408.9 of the Zoning Regulations provides that "[e]vidence shall be taken in conformity with D.C. Official Code § 2-509(b) (2012 Repl.)."

Other than that conclusory statement, the Motion to Strike includes irrelevant facts and non-sequiturs, such as “I am not the Applicant and I am not on trial.” Ms. Roth also attacks the Applicant and this counsel as having “moral issues,” claiming that we are shaming her in a public hearing and engaging in “bullying” activity – for plainly presenting direct evidence of Ms. Roth’s own actions. She also, quite incongruously, claims that this evidence, which she has admitted as being completely true and accurate, is “defamatory material.” These statements are neither true nor germane to the question of the admissibility of the subject evidence.

For these reasons, we respectfully ask that the Board deny the Motion to Strike.

Respectfully Submitted,

*Martin P Sullivan*

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 1, 2024, an electronic copy of this submission was served to the following:

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