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Via IZIS

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

Re: Applicant's Response to the Party Opponents Submission - BZA Case No. 21330

Dear Chairperson Hill and Members of the Board:

The party opponent's attempt at an opposition is based on a long narrative, most of which is irrelevant to the applicable special exception criteria. Party opponent, in its latest filing, repeatedly uses provocative words including "illegal", "retaliation", and "bad faith." It raises irrelevant Building Code issues, and offers various misrepresentations, presumably for emotional effect in the absence of legal substance. As the Board knows, there are at least two sides to every such story. In this response, we will endeavor to focus only on the special exception criteria by which the Board will evaluate this application, rather than defending the Applicant on points not before the Board. The Applicant will be available to answer any questions the Board may have about anything that the party opponent has asserted in their filing, but for this response, we will do our best to focus on the relevant facts relating to light and air, privacy, and character, scale, and pattern.

First, we note that despite the party opponent's repeated disparagement of the intent and character of the Applicant, the Applicant has managed to secure written support from all the other three (3) abutting neighbors, as well as the adjacent neighbor across the alley. This support was secured when this was a variance application asking for 77% lot occupancy.

The party opponent claims that the Applicant only minimally reduced the footprint of the proposed addition, to purposefully harm the party opponent, ignoring the fact that the lot occupancy went from 77% to 70%. Furthermore, the burden of proof was substantially reduced from an area variance to a special exception, hopefully to secure approval for what the Applicant needs to protect his vehicle from the somewhat unusual position of his parking space abutting multiple 3rd-story roof decks, from which items have already fallen and significantly damaged his personal car.

The Party-Opponent claims the following impacts must be considered under the Zoning Regulations governing special exceptions:

- Light and Air: The carport floor is underneath the window. As such, it has no impact on light or air through the party-opponent's at-risk window.
- Safety: While safety is not a special exception concern, there is nothing about the carport that alters any safety issues regarding the Party-Opponent's at-risk window. We would assert that (i) this window is much more secure than the at-grade windows at the front of her building; (ii) that the window is more protected from public view, and public access, *with* the proposed structure than without; and (iii) that Mr. Pike has no interest, nor would any of his guests, in criminally entering Ms. Jacobson's house through her at-risk window.
- Privacy: Party opponent's privacy concerns relate solely to her at-risk window. As noted in a previous filing, the party opponent is not granted any prescriptive negative easement (a restriction on the Applicant's use and enjoyment of his own property), by virtue of simply having an opening from her building out onto Mr. Pike's yard. Nevertheless, the Applicant is willing to propose solutions that would clearly solve the Party-Opponent's privacy concerns, should the Board prefer such a solution. The Applicant would be willing to cover the expense of frosting the Party Opponent's window, thereby allowing the same light to come through while solving privacy concerns. The Applicant would also be willing to construct a boxed-fence, or window well of sorts, that would effectively provide privacy yet still allowing light and air (while also further addressing the stated safety concerns).
- Property Value: This claim is not properly before the Board in a special exception case. The Applicant discussed with the party-opponent's counsel the potential to secure at least a temporary (for the life of the carport, for instance) negative easement of the kind noted above, which would possibly have increased the Party-Opponent's property value, but Party-Opponent was not interested in such an agreement.
- Quiet Enjoyment of Her Home: Ms. Jacobson has the right to quiet enjoyment of her home subject to the neighbors that she has all around her and their lawful use of their own properties, without unreasonable disturbances or violation of noise regulations, etc. Mr. Pike also has the right to the quiet enjoyment of his home, along with the right to protect his personal vehicle – and his personal safety - from damage from abutting roof decks. The existence of this carport, and Mr. Pike's reasonable use of his yard, has no material impact on the Party-Opponent's quiet enjoyment of her home.

Regarding the Party-Opponent's confusion about the impact on this case of the at-risk window. The subject window is considered "at-risk" because it sits on the property line and looks out onto the Applicant's property. This is not a building code-related problem unless and until the Applicant were to build a structure up against, or close to, the window; in which case the *Party-Opponent,* not the Applicant, would then be required, under Building Code, to close up the subject window (hence the term "at-risk"). We are merely asserting that by placement of an opening on a

neighbor's property line, the party opponent is not then afforded the ability to restrict the Applicant's right to use their property; *i.e.*; the Party Opponent is not granted a negative easement, or any other property right in the Applicant's property, pursuant to *Hefazi v. Stiglitz* (862 A.2d 901; DC 2004).

Finally, Party-Opponent counsel's citation of *Temple v. D.C. Rental Housing Commission* is 100% inapplicable to this situation. That case related to specific landlord-tenant law issues, and the fact that that opinion used the term "unclean hands" means nothing in the present case.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2025, an electronic copy of this submission was served to the following:

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