



March 9, 2018

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

**RE: BZA Case No. 19683  
Applicant's Opposition to Untimely Party Status Requests and Motion to Strike**

Chairperson Hill and Honorable Members of the Board:

On behalf of Applicant Brian and Carolyn Wise (the "Applicant"), please find enclosed an opposition to the untimely Requests for Party Status filed by Thomas Coleman and Lauren Friedman (Ex. No. 57), Quynh vu Bain (Ex. No. 59), and Clayton Chilcoat (Ex. No. 60). Given the untimely nature of the party status requests, the Applicant has also included a Motion to Strike the party status requests from the record in the case.

As noted in the Applicant's filing, the Board requested a limited scope hearing to be held on March 21, 2018. As such, the Applicant respectfully requests that the Board address the Party Status Requests as a preliminary matter at its next scheduled hearing on March 14, 2018. This will preserve the intended limited scope of the hearing of March 21, 2018.

Thank you for your attention to this matter and we look forward to presenting to the Board at the limited scope hearing on March 21, 2018.

Sincerely,  
COZEN O'CONNOR

By: Meridith Moldenhauer

**Certificate of Service**

I hereby certify that on this 9<sup>th</sup> day of March, 2018, a copy of the foregoing Opposition to Party Status Requests and Motion to Strike was served, via electronic mail, on the following:

District of Columbia Office of Planning  
c/o Matt Jesick, Development Review Specialist  
1100 4th Street SW, Suite E650  
Washington, DC 20024  
[matthew.jesick@dc.gov](mailto:matthew.jesick@dc.gov)

Advisory Neighborhood Commission 6B  
c/o Daniel Ridge, Chairperson  
1504 Potomac Avenue SE  
Washington, DC 20003  
[6B09@anc.dc.gov](mailto:6B09@anc.dc.gov)

Advisory Neighborhood Commission 6B01  
c/o Jennifer E. Samolyk, SMD Commissioner  
407 2<sup>nd</sup> Street SE  
Washington, DC 20003  
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Meridith Moldenhauer

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

**APPLICATION OF  
BRIAN AND CAROLYN WISE**

**BZA APPLICATION NO. 19683  
CONTINUED HEARING DATE: MARCH 21, 2018**

**APPLICANT'S OPPOSITION TO UNTIMELY PARTY STATUS REQUESTS AND  
MOTION TO STRIKE**

On behalf of Brian and Carolyn Wise (the "Applicant"), please consider the following opposition to the Requests for Party Status filed by Thomas Coleman and Lauren Friedman (Ex. No. 57), Quynh vu Bain (Ex. No. 59), and Clayton Chilcoat (Ex. No. 60) (collectively, the "Party Status Applicants"). As will be explained below, the Requests for Party Status are untimely filed and, therefore, do not meet the standard to obtain party status as set forth under Subtitle Y § 404.3. Accordingly, the Party Status Applicants' requests should be denied and stricken from the record.

**I. The Party Status Applicants' Requests are untimely pursuant to Subtitle Y § 404.3**

Under Subtitle Y § 404.3, "[a] Request for Party Status that is to be considered at a public hearing shall be filed with the Board **not less than fourteen (14) days** prior to the public hearing." (emphasis added). Here, the Applicant's case was originally scheduled for hearing on February 7, 2018. The Applicant's case was subsequently rescheduled for a public hearing on February 21, 2018, at which time the Board held a full hearing on the application. As such, the deadline for requesting party status was February 7, 2018, or 14 days prior to the full hearing on the application.

The Party Status Applicants simply failed to file timely requests pursuant to Subtitle Y §404.3. Mr. Coleman and Ms. Friedman submitted a Request for Party Status on March 6, 2018, and Ms. Bain and Mr. Chilcoat submitted individual Requests for Party Status on March 8, 2018. Not only did the Party Status Applicants fail to file within 14 days prior to the hearing date, but

these party status requests were made *subsequent* to the hearing date on February 21, 2018.<sup>1</sup>

Therefore, the Requests for Party Status are untimely and should be denied.

**II. The Board has previously determined that a Request for Party Status must be made 14 days prior to the first hearing on an application**

In prior instances of party status applicants filing untimely requests, the Board has determined that Subtitle Y § 404.3 refers to the *first* hearing on an application and not to subsequent, continued hearing dates. For instance, BZA Case No. 19659 was originally presented to the Board on December 20, 2017, but the hearing was continued to January 31, 2018. On January 16, 2018, a neighbor in opposition to the case submitted a request for party status. *See* BZA Case No. 19659, Ex. 104. At the continued hearing on January 31, 2018, the Board denied Mr. Guinee’s party status request, finding that the “threshold date” was 14 days prior to the first hearing on December 20<sup>th</sup>. *See* BZA Case No. 19659, 1/31/18 transcript at pg. 91. As such, the Board determined that the party status application in that matter was “late to apply” and that the request was “untimely.” *See* BZA Case No. 19659, 1/31/18 transcript at pgs. 79 and 92.

Similarly, in this case, the Board held its first hearing on the Application on February 21, 2018. Notably, all but one of the Party Status Applicants appeared and presented to the Board as witnesses in opposition to the Application. Yet, none of the Party Status Applicants had filed requests for party status at the time of the hearing. Further, at the conclusion of the proceedings on February 21, 2018, the Board very clearly continued the matter for a *limited scope* hearing on March 21, 2018 to consider additional filings only, but not “just throwing the door open for everything.” *See* 2/21/18 hearing transcript at pg. 357-358. As such, the Requests for Party

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<sup>1</sup> All three Party Status Applicants were aware of the case well in advance of the hearing, having participated during ANC meetings in January and February. *See* 2/21/ hearing transcript at pgs. 327-328. Additionally, Mr. Coleman stated that he had appeared at the Board during the previous case regarding the Property, which was also filed by the Applicant as BZA Case No. 19536. *See* 2/21/ hearing transcript at pg. 325.

Status should be denied.

Additionally, the continued hearing was intended for multiple reasons, including to provide an opportunity for the neighbors to talk about a resolution. In response to concerns voiced by Mr. Coleman and Ms. Friedman at the hearing, the Applicant engaged with their counsel and proposed a Construction Management Agreement that was sent to counsel for Ms. Coleman and Mr. Friedman on March 2, 2018. Unfortunately, the Applicant received no response to the proposed agreement except for this flurry of party status requests. The Applicant remains open to resolving these outstanding issues with the neighbors, but these untimely requests should be denied.

**III. The Party Status Applicants' Requests Should Be Stricken from the Record pursuant to Subtitle Y § 404.3**

The Applicant moves to strike the Requests for Party Status from the case record. Pursuant to Subtitle Y § 602.6, “supplemental material received by the Board after the close of the record that bears upon the substance of the application or appeal shall be returned by the Director and not accepted into the files of the Board.” In this case, the Board held a public hearing on the application on February 21, 2018 and closed the record but for specific filings including “a further response” from Mr. Coleman, Ms. Friedman and Mr. Chilcoat and the Office of Planning due by March 9, 2018, followed by an executive summary and additional response from the Applicant by March 16, 2018. *See* 2/21/18 transcript at pg. 351. As such, the Board makes clear that anything outside the limited request for additional information would not be considered. Accordingly, the Requests for Party Status should be stricken from the case record.

**IV. Conclusion**

In summation, the Party Status Applicants' requests are untimely and do not satisfy the requirements of Subtitle Y § 404.3. Therefore, the Applicant opposes the Party Status

Applicants' requests and respectfully asks the Board to deny the requests and have them stricken from the record.

Finally, the Applicant requests the Board waive the time requirements stated in Subtitle Y § 404.2 and address the Party Status Requests as a preliminary matter at its next scheduled hearing on March 14, 2018. This will preserve the intended limited scope of the hearing of March 21, 2018. Resolving these improper party status requests in advance of the March 21<sup>st</sup> continued hearing is in the interest of all parties and would not prejudice the rights of any party as required by Subtitle Y § 101.9.

Respectfully Submitted,  
COZEN O'CONNOR



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