



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



FORM 150 – MOTION FORM

THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A
FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.:	19689					
Motion of:	<input type="checkbox"/> Applicant	<input type="checkbox"/> Petitioner	<input type="checkbox"/> Appellant	<input checked="" type="checkbox"/> Party	<input type="checkbox"/> Intervenor	<input type="checkbox"/> Other _____

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

REQUEST POSTPONEMENT OF DECISION MAKING

Points and Authorities:

On a separate sheet of 8 1/2" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form (see instructions).

Consent:

Did movant obtain consent for the motion from all affected parties?

- | | |
|---|--|
| <input type="checkbox"/> Yes, consent was obtained by all parties | <input type="checkbox"/> Consent was obtained by some, but not all parties |
| <input type="checkbox"/> No attempt was made | <input checked="" type="checkbox"/> Despite diligent efforts consent could not be obtained |

Further Explanation: APPLICANT HAS INDICATED ITS OPPOSITION TO THIS MOTION

CERTIFICATE OF SERVICE

I hereby certify that on this 25 day of JULY, 2018

I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning

in the above-referenced ZC or BZA case via: Mailed letter Hand delivery E-Mail Other 1215

Signature: [Handwritten Signature]

Print Name: AMANDA FOX PERRY, ANC108

Address: 1664 D BEEKMAN PLACE NW WASHINGTON DC 20009

Phone No.: (216) 965-5143 E-Mail: 108@ANC.DC.GOV

**DISTRICT OF COLUMBIA
Board of Zoning Adjustment**

:

In re: Application of MIC9 Owner LLC :

BZA Case No. 19689

Chair, Frederick L. Hill

:

**MOTION BY ANC1C REQUESTING POSTPONEMENT OF
DECISION MAKING IN CASE NO.19689**

ANC 1C moves to request that a decision in this case be postponed until such time as (1) the Office of Planning has completed its own independent impact studies and assessment of the project in accordance with the Comprehensive Plan, including the Generalized Policy Map and the Future Land Use Map (FLUM), and (2) until the Zoning Commission and the Office of Planning have reviewed the inconsistency between the FLUM and the existing zoning map.

I. Zoning Commission and Office of Planning Must Review This Application In Light of the Discrepancy Between the FLUM and the Zoning Map Before BZA Can Render a Decision on Applicant’s Request to Extend Standards of RA-4 Zone

As noted in the July 11th ANC1C Report, see Exhibit 88, when the zoning map does not correspond with the FLUM designation, the zoning must be modified to comply with the Comprehensive Plan maps. This parcel is partially zoned as RA-4, a category that does not comply with the “moderate density” designation set forth by the Comp Plan’s FLUM.

Because this request for special exception relief to shift the boundary lot line depends on the validity of the parcel’s RA-4 zoning, any decision to grant the relief sought would be clearly erroneous pursuant to the FLUM and the text of the Comprehensive Plan. The BZA should not consider the Applicant’s request for relief under DCMR 11X § 207.2, until the Office of

Planning and the Zoning Commission have taken the necessary steps to bring this lot into compliance with the FLUM.

II. The Office of Planning Report is Insufficient For Great Weight Consideration by BZA

The Office of Planning Report Does Not Assess the Project's Impacts as Required by Zoning Law

Pursuant to DCMR 11Y § 405.4, the Office of Planning is required to report on the Applicant's compliance with each element of the special exception requirements. The ANC Reports filed in this case, see Exhibits 55 and 88, provide the basis of our assertions that the Applicant has not satisfied the specific requirements for the individual relief being sought, and so we will not argue those points here. However, special exception approval also requires the Applicant to demonstrate that "the proposed project is in harmony with the *general purpose* and intent of the Zoning Regulations and Zoning Maps." DCMR 11X § 901.2(a) (emphasis supplied). The purpose of the Zoning Regulations, codified at § 6-641.02, is:

"to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. . . . with reasonable consideration, among other things, of the character of the respective districts."

The Office of Planning report that has been entered in this case, see Exhibit 56, is incomplete. The report does not establish that the Applicant's proposal is in harmony with the purpose of the Zoning Regulations, as it fails to address the project's possible impacts on:

- (1) safety from fire, panic, and other dangers;
- (2) light and air; and,

(3) concentration of population and the overcrowding of land. Notably, the OP report fails to address the impacts of the residential portion of the building altogether, despite the fact that it would add at least 110 units. Instead, it cites to the MOU between the neighbors and the future new condo association as sufficient for mitigating potential impacts, without any apparent investigation.

Nor does the OP report indicate how this project would “promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities.” ANC 1C respectfully moves this Board to request further assessment by the Office of Planning, including, but not limited to, independent studies of the impacts listed above, before issuing a decision in this case.

The Office of Planning Report Does Not Address Clear Comprehensive Plan Violations

In both of the Reports it filed in this case, ANC1C states its concern that this project is not consistent with the Comprehensive Plan. In email correspondence with ANC1C on July 24, 2018, Office of Planning Director Eric Shaw stated:

“while OP’s BZA [report] does not include information on the Comprehensive Plan I assure you that there are multiple checks by OP and other review agencies to ensure that projects are not inconsistent with the Comprehensive Plan before a project is set down for consideration by the BZA.”

See Exhibit A, attached to this Motion. ANC1C is not satisfied with these assurances, especially in light of the obvious discrepancy between the FLUM and the zoning map, discussed in the first section of the Motion. We bring this request for postponement in part so that the Board can obtain further information from the Office of Planning about the steps it took to determine this project’s compliance with the Comprehensive Plan, and so the Office of Planning can update or revise the study appropriately.

It is not enough for the Office of Planning to rely on the Applicant's statement and the MOU process in determining that a project will not have undue impacts on the community. The Applicant's statement is naturally self-serving. The MOUs, which the Office of Planning refer to frequently, seemingly as a substitute for its own independent studies, are certainly helpful, and the level of detail and improved enforcement mechanisms are laudable. But the Applicant, far better versed than the community in zoning law and procedure, controlled the process.

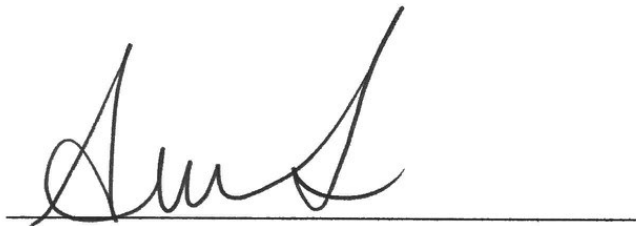
Discussions about what terms were legal and enforceable, and what terms were and were not acceptable, were largely informed by the Applicant's assertions – assertions most of the 15 participating community members were in no position to question. For the BZA to accept the Office of Planning's endorsement of this project, which heavily relies on the MOUs, would have the effect of bestowing upon those 15 individual laypersons the duties which lawfully belong to the Office of Planning - determining the future health, safety, noise, cleanliness, crowding, transportation, and land use of and by the community, to name just a few - regardless of the fact that they lacked the requisite expertise needed to assess the project's impacts, as well as the procedural and legal knowledge necessary to ensure the equality of their negotiating power. The MOU process in this case was comprehensive, but it cannot supplant the role of the Office of Planning.

Pursuant to DCMR 11Y § 405.8, in referring all applications to the Office of Planning, the Office of Zoning "shall specifically request a determination of the municipal interest". In its Memorandum referring this matter to the Office of Planning, see Exhibit 29, the Office of Zoning did not make this request. Nor, for the reasons stated above, was an adequate determination of the municipal interest provided. ANC1C respectfully moves this Board to

request further assessment by the Office of Planning, including, but not limited to, independent studies of the impacts listed above, before issuing a decision in this case.

III. Conclusion

For the foregoing reasons, ANC1C respectfully requests that the Board of Zoning Adjustment postpone decision-making in this case until such time as (1) the Zoning Commission and the Office of Planning have reviewed the inconsistency between the FLUM and the existing zoning map and, (2) the Office of Planning has completed its own independent impact studies and assessment of the project in accordance with the Comprehensive Plan, including the Generalized Policy Map and the FLUM.

A handwritten signature in black ink, appearing to read "Amanda", is written above a solid horizontal line.

Amanda Fox Perry
Advisory Neighborhood Commissioner 1C08

CERTIFICATE OF SERVICE

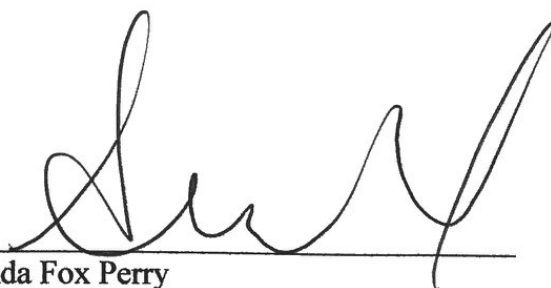
I hereby certify that on July 25, 2018, the foregoing Motion was delivered by email and IZIS to the following:

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Amanda Fox Perry
Advisory Neighborhood Commissioner 1C08