

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

<b>In Re Application of:</b>	)	<b>BZA Case No. 19705</b>
	)	<b>ANC 1B</b>
<b>Madison Investments LLC</b>	)	<b>Public Hearing Date: March 7, 2018</b>

**REPLY TO APPLICANT’S OPPOSITION TO REQUEST FOR PARTY STATUS  
OF LDP ACQUISITIONS LLC**

On February 27, 2018, Applicant Madison Investments LLC (“Madison”) made a bold effort to head off the request for party status of LDP Acquisitions LLC (“LDP”), even taking the extraordinary step of asking the Board to deny party status at the public meeting on February 28, 2018. Although the Board denied that request and directed that the matter be addressed as a preliminary matter at the public hearing of March 7, 2018, LDP addresses here several of the arguments made by Madison.

First, Madison suggests that LDP is asking the Board to wade in to legal issues and disputes that are outside of its jurisdiction and are presently pending in the Superior Court of the District of Columbia. *See* Opp. at 1-2. Nothing could be further from the truth. LDP recognizes that it is not for the Board to decide competing claims of ownership and priority over the affected real estate, and has not asked the Board to do so. Those matters are before and will be decided by the Superior Court in the matter styled as *LDP Acquisitions LLC v. Felix Nelson Ayala, et al.*, Civil Action No. 2017 CA 006699 B (Calendar 13; Judge John M. Campbell). In fact, although Madison does not disclose this in its filing, it has already sought and was granted leave (with the express consent of LDP) to intervene in the Superior Court case. The parties there can and will litigate these issues and determine their respective rights. In fact, Judge Campbell has scheduled a hearing on LDP’s motion for a temporary restraining order (the first step in moving forward to

decide the legal disputes) for Monday, March 5, 2018. The legal issues will be decided through that proceeding and the subsequent litigation in that case.

In the interim, it is inappropriate for this Application to proceed. Madison does not deny that it rushed this Application forward as a means of gaining an advantage in the dispute regarding ownership of the Properties involved in the litigation (including the Property in which LDP holds its interest as a contract purchaser and holder of equitable title). That effort should be rejected.

Second, Madison suggests that it has authorization from the current record owners of the Property of which LDP holds equitable title, authorizing the filing of the Application. Interestingly, Mr. and Mrs. Ayala, the current record owners of LDP's Property, furnish Affidavits saying that they "have not sold the Property" and support the filing of the Application. They do not deny, nor could they, that they entered into a contract to sell the Property to LDP. Nor do they mention the ongoing litigation in Superior Court, in which they are both parties. Madison also provides a letter from Martha's Table, Inc., which has no interest in the Property in which LDP holds equitable title, and therefore offers no valid support or authority for the Application to go forward.

Madison cites "Subtitle Y § 200" in support of the argument that it has shown authority to pursue the Application. Those provisions, however, deal only with the requirements for persons appearing before the Board to demonstrate that the party for whom they appear, or whom they purport to represent, has authorized the appearance. Parties may appear on their own behalf or through a representative. These provisions are set forth in Sections 200.1 through 200.4, and nowhere do they elevate the authorization to appear as a representative to the legal

status of a person permitted to file a zoning Application that would affect real estate in which another party – LDP, in this case – has superior rights and interests.

Third, attempting to gloss over LDP's superior rights and interests, Madison claims that LDP has shown no interests that would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of persons in the general public. *See* Opp. at 3. To the contrary, LDP has shown that it has superior rights and interests in the Property and would be irreparably harmed if an interloper such as Madison were permitted to employ the tactic of pursuing subdivision, combination, and extensive new construction involving LDP's Property and adjacent real estate. LDP's rights and interests in the affected real estate are unique. *See, e.g., Tauber v. Quan*, 938 A.2d 724, 732 (D.C. 2007) ("When land is the subject matter of the agreement, the legal remedy is assumed to be inadequate, since each parcel of land is unique."). It is axiomatic that a zoning Application filed by someone else, whether granted, denied, or forced to undergo or submit to various changes and conditions, would necessarily affect LDP's unique real property rights. Obviously, if a structure goes up on a group of lots combined together, including the so-called "Smucker's Property" (in which LDP holds equitable title), LDP's rights and interests will be profoundly affected – perhaps irretrievably so.

To cloud the matter further, Madison suggests that the U Street, N.W. offices of LDP should be used to determine that LDP is over 1,500 feet from the Property that is the subject of the application. LDP, of course, cannot presently receive mail at 2118 Fourteenth Street, N.W. (Lot 10 in Square 0203) and so provided the Board with the address of its offices. As Madison well knows, LDP's mailing address is not the Property in which it owns equitable title and it is not the Property from which LDP's interests should be judged. LDP holds rights and interests in

a part of the real estate that is the subject of the Application. There is literally no distance between the Property in which LDP holds equitable title and the property that is the subject of the Application. LDP plainly would be “significantly or uniquely affected by [the] action requested of the Board,” *see Ait-Ghezala v. D.C. Bd. Of Zoning Adjustment*, 148 A.3d 1211, 1215 (D.C. 2016), and is therefore entitled to party status.

Nor is LDP’s interest “hypothetical and theoretical in nature.” *See Opp.* at 5. Upon execution of a valid, enforceable contract that affects real property, equitable title vests immediately in the purchaser. *See Ward v. Wells Fargo Bank, N.A.*, 89 A.3d 115, 122-23 (D.C. 2014) (citing *Grimes v. Newsome*, 780 A.2d 1119, 1121 (D.C. 2001)). Equitable title carries with it various rights and interests, even including the right to maintain an action for possession of the real property. *Ward*, 89 A.3d at 122-23 (citing *Fiske v. Bigelow*, 9 D.C. (2 MacArth.) 427, 433-34 (1876)). As our Courts have thus recognized, the rights held by LDP are not the type that can be casually thrust aside as “hypothetical and theoretical in nature.”

Our Courts have also recognized the unique nature of real property rights and interests and have maintained the sanctity of and protections for those rights and interests. Allowing Madison to trample those rights by carrying forward its own plans to develop LDP’s Property will cause irreparable harm. These and other issues are the subject of the litigation in the Superior Court, in which Madison and others are parties. That litigation should go forward to determine these contested issues and claims.

Meanwhile, this Application should not proceed. Not only does Madison not have the right to proceed, but it is a waste of the Board’s resources to spend the time reviewing the Application, conducting hearings, and rendering decisions. Those sorts of proceedings should await the outcome of the pending litigation.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of March, 2018, I caused to be emailed a copy of this Reply to Opposition to Request for Party Status of LDP Acquisitions LLC to the following:

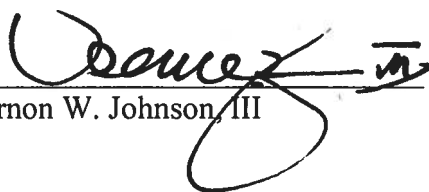
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