



**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.:**

**Motion of:**



Applicant



Petitioner



Appellant



Party



Intervenor



Other \_\_\_\_\_

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

Request that the BZA deny the party status request of the West End Citizen's Association.

**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?

Yes, consent was obtained by all parties

Consent was obtained by some, but not all parties

No attempt was made

Despite diligent efforts consent could not be obtained

Further Explanation: The only affected party in the case is ANC 2A. Applicant will request their consent with this service. The Certificate of Service is included in the attached narrative.

**CERTIFICATE OF SERVICE**

I hereby certify that on this

10

4

day of

May

Month

,

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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 \_\_\_\_\_

**Signature:**

*Cynthia Giordano*

**Print Name:**

Cynthia Giordano

**Address:**

1919 Pennsylvania Avenue, NW, Suite 550, Washington, DC 20006

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

**APPLICATION OF  
ACTON ACADEMY FOUNDATION  
HEARING DATE: MAY 16, 2018    ANC 2A**

**BZA APPLICATION NO. 19748  
SQUARE 28, LOTS 172 AND 846**

**MOTION TO DENY PARTY STATUS REQUEST  
OF  
WEST END CITIZENS ASSOCIATION**

**Motion Summary**

The Applicant, Acton Academy Foundation, hereby requests that the Board deny the party status request filed by Sara Maddux and Barbara Kahlow (“Maddux/Kahlow” or “Petitioners”) purportedly on behalf of the West End Citizens Association (“WECA”) based on the following grounds which are further detailed below:

1. The party status request does not meet the filing requirements set forth in Subtitle Y Sections 404.6-404.7 which require service on the Applicant and the affected ANC at the time of filing, and Section 401.1(g) which requires proof of authorization.
2. The Maddux/Kahlow claim to represent WECA and proffer WECA as the party in this case is unsubstantiated.
3. Maddux/Kahlow have failed to clearly demonstrate that WECA’s interests are more “significantly, distinctively, or uniquely affected.”
4. Maddux/Kahlow are abusing the party status procedure to kill the proposed school by making it impossible to open in September, which will likely close its opportunity to open at all.

Based on any and all of the foregoing reasons the Petitioners’ party status request should be denied. Maddux/Kahlow will still have an opportunity to testify and present their views on the Application at the hearing so they will not be prejudiced by a denial of their party status request.

A. **The Petitioners' party status request does not meet the procedural requirements set forth in Subtitle Y Sections 404.6-404.7 which require service on the Applicant and the affected ANC at the time of the party status request filing, and Section 401.1(g) which requires proof of authorization**

A valid party status request must meet several procedural requirements set forth in the Zoning Regulations. Subtitle Y-37 § 404.3 requires that party status request “must be filed not less than fourteen (14) days prior to the hearing” and § 404.6 requires that “at or before the time of filing” it shall be served on the applicant and the affected ANC. Additionally, pursuant to § 404.7, “at the time of the filing request” the person requesting party status is required to “file an affidavit of service to all parties.”

Subtitle Y-14 § 205 “Service of Documents” details the ways that service “may be made” to be “considered complete.” Service may be done by personal delivery, express mail, first-class mail, fax, or e-mail. Petitioners have not served the Applicant using any of these methods. Petitioners have not filed an affidavit of service indicating service on ANC 2A either. Consultations with the ANC indicate that ANC 2A was never served.

Finally, Subtitle Y-36§ 401.1(g) clearly provides that a valid party status request made on behalf of an association must include:

“proof that the entity authorized the persons filing the request to do so. Such proof may consist of a resolution of the person’s board of directors; a copy of the by-law provisions authorizing the particular officer, employee or agent to represent the person in such proceedings; a letter signed by all the members of the organization; or similar proof satisfactory to the Board.”

Maddux/Kahlow have submitted no such proof.

Based upon Petitioners’ failure to meet the above procedural requirements, the Board should deny Petitioners’ party status request. We note that Maddux/Kahlow are frequent participants in BZA and Zoning Commission matters and should be held to a strict standard of compliance with the applicable requirements. These requirements are designed to provide fair notice to the Applicant and the affected ANC, facilitate the possibility of a resolution of issues in contention prior to a hearing, and ensure that organizations represent their members.

B. **The Maddux/Kahlow claim to represent WECA and proffer WECA as a party in this case is unsubstantiated and misleading.**

As indicated above, Maddux/Kahlow have submitted no proof the WECA has authorized the subject party status request, as required by Subtitle Y-36§ 401.1(g).

Further, to the best of the Applicant's knowledge, WECA has not held a regular or special meeting to consider the Application and there has been no vote of the members.

In fact, by WECA's Bylaws, Maddux/Kahlow are superseding their authority by filing this request for party status on behalf of WECA. The WECA Bylaws require the organization to provide notice of a meeting, satisfy quorum, and hold a vote of its members. The Bylaws state that a simple majority "controls a decision." Indeed, the claim to represent WECA in this case appears to be a sham or at the very least an abuse of the Petitioners' authority as officers of WECA. Maddox/Kahlow are seeking to bootstrap their own personal views before the BZA with an unauthorized party status request, purportedly on behalf of WECA.

Apparently, this misuse of WECA by Petitioners is not new; it is a familiar pattern. As two neighbors detailed in a letter in opposition to the party status request, Maddux/Kahlow have long misused WECA as a front for their personal opposition to all manner of zoning and land use issues in Foggy Bottom, including an outdoor cafe, new developments, a grocery store, a hospital helipad, a bike lane, and now a small Montessori school.

**C. Maddux/Kahlow have failed to clearly demonstrate that WECA's interests are more "significantly, distinctively, or uniquely affected" than those of the general public.**

Subtitle Y-37 § 404.13 of the Zoning Regulations requires that the Board shall grant party status only if the person requesting party status has "*clearly*" demonstrated that the person's interests would likely be "*more significantly, distinctly, or uniquely affected than those of other persons in the general public*" [emphasis added].

As the case record shows, nine neighbors who live adjacent to or nearby St. Paul's Parish have all written letters of support of the Application. Several of these neighbors live within earshot of the outdoor play area and have provided statements that any potential sound from the young children playing on the playground will not be objectionable to them.

Ms. Kahlow and Ms. Maddux live blocks away in high-rise apartment buildings located outside of the 200-foot radius of the proposed playground. They have provided no specific evidence of other WECA members who can reasonably be adversely affected by any children playing outdoors on the Parish property. Regardless, any such members cannot be any more significantly, distinctively or uniquely affected by such sounds than the neighbors in support who live immediately adjacent to the playground.

The same logic applies to the Petitioners' claims regarding traffic. Maddux/Kahlow's party status request fails to *clearly* demonstrate how the school's drop off and pick up arrangements will affect WECA members *more than* all the adjacent and nearby neighbors who are on record supporting the Application.

The ANC and Foggy Bottom Association have held meetings on the Application, following notice to the community. These meetings were open to the general public and were well attended. Persons who attended these meetings expressed no noise, traffic, or other concerns. Further, nearby neighbors at these meetings did not share the concerns expressed by Maddux/Kahlow and stood up to publicly voice their disagreement with Maddux/Kahlow. The ANC unanimously approved the Application. The Foggy Bottom Association submitted a letter in support. So again, it is unlikely that any WECA members could be more significantly or uniquely affected by “noise” or traffic or other potential impacts when others in the community are not. And the party status request fails to demonstrate this, *clearly* or otherwise.

**D. Maddux/Kahlow are not dealing in good faith, have refused to meet, and are abusing the party status procedure to kill the proposed school by making it impossible to open in September.**

As detailed in its pre-hearing statement, the Applicant has made extraordinary efforts to reach out to neighbors, share plans, and get feedback. Indeed, as part of this effort, the Applicant’s cofounder David Kirby met with Ms. Maddux and Ms. Kahlow early on in the process, on March 27, visiting with them in Ms. Kahlow’s living room. Ms. Maddux and Ms. Kahlow expressed some concerns at this meeting, but noted that it would ultimately come down to what the neighbors who live nearby think about Acton’s plans.

The Applicant has been extremely grateful that the nearby neighbors have given Acton a warm welcome and have been supportive of Acton’s plans. Indeed, many neighbors made the effort to attend the ANC meeting at 9:30 p.m. on a Wednesday to express their support. The ANC voted unanimously to approve.

Mr. Kirby reached out to Ms. Maddux and Ms. Kahlow again after the ANC meeting to hear what concerns might remain after they heard the unanimous comments in support of the school from the attendees of the ANC meeting. Ms. Maddux and Ms. Kahlow refused to meet with Mr. Kirby. Abandoning their previous position that they would be guided by the neighbors’ views, and rather than seeking or considering potential mitigation options with the Applicant, their strategy appears to be to try to kill the school proposal by triggering a requirement for a full blown BZA order. Due to a current backlog of BZA orders, a full BZA order will likely take months to issue. This might make it impossible for the school to open this September.

If the requirement for a full BZA order is triggered by Maddux/Kahlow, Acton Academy will not be able to open for the families who are counting on Acton for their children in September. Indeed, the Applicant’s cofounders are counting on Acton for their own 4-year-old daughter. This would cause real harm. Families would be left scrambling to find alternatives school options. Further, once those families have enrolled their children elsewhere, they will be reluctant to uproot them and enroll them at Acton

regardless of their strong interest and support for Acton's program. This will likely close Acton's opportunity to open at all.

A summary BZA order would meet the Applicant's timeline to open in September. As noted in our pre-hearing statement, the Applicant has worked diligently with the ANC, DDOT, and OP to meet its timeline. The Applicant paid the required fees for a preliminary screening meeting with the City permitting office at which the Applicant's architects, contractors, and engineers presented the architectural plans for the minor work required to update the Parish property to get it ready for the first day of school. The feedback provided will help expedite the final review of the plans upon application of the required building permits. Once a summary order is executed, the City will be ready to issue the required permits to proceed. With a summary order, Acton will be able to open this September for the families who are counting on the school for their children.

**E. Conclusion**

For all of the foregoing reasons, we respectfully request that the Board deny the party status request in this case. The party status request fails to meet both the procedural and substantive requirements for approval. Maddux/Kahlow have an appropriate, alternative process for expressing their concerns as persons in the upcoming BZA hearing.

Thank you in advance for your consideration in this matter.

Sincerely,



Cynthia A. Giordano

**CERTIFICATE OF SERVICE**

I hereby certify that on May 14, 2018, a copy of the foregoing Party Status Opposition was served by electronic mail on the following at the addresses stated below, with hard copies mailed on May 14, 2018.

Mr. Joel Lawson  
Ms. Brandice Elliott  
District of Columbia Office of Planning  
1100 4th Street, SW, Suite 650E  
Washington, DC 20024  
joel.lawson@dc.gov

Via U.S. Mail and Email

Advisory Neighborhood Commission 2A  
2020 Pennsylvania Avenue NW #293  
Washington, DC 20003

Via U.S. Mail and Email

West End Citizen's Association  
PO Box 58098  
Washington, DC 20037-8098

Via U.S. Mail



Cynthia Giordano