

Tab A

----- Forwarded message -----

From: <bruce@meddevelopers.com>

Date: Wed, Sep 20, 2017 at 7:53 PM

Subject: RE: 2619 Wisconsin Ave NW - update

To: Anita Crabtree <anitaliviamitra@yahoo.com>

Cc: <nfinland@gmail.com>, <bruce@meddevelopers.com>

Anita:

Thanks for taking my call today..but Nick (Finland) reminded me that I may have inadvertently provided you with less than totally accurate information.

The prospective facility will be classified as assisted living, not senior housing. This area is not zoned for a facility that would be only age restricted, which is akin to it being just another multifamily housing facility (i.e. apt building). You probably already knew that from previous activities.

Also, I mentioned that it was my understanding that we were designing a 30 unit property, but again, Nick informs me we are attempting to gain approval for 40 units, though it's not yet certain what number will be approved.

I have passed along your other questions re green space and common areas to Nick, who will be the main point person on the design and development. Let's set a time for the two of you to talk directly, once you have had a chance to touch base with the other stakeholders.

Looking forward to that,

Bruce

Best,

Bruce

From: Anita Crabtree [mailto:anitaliviamitra@yahoo.com]
Sent: Thursday, September 14, 2017 11:20 AM
To: bruce@meddevelopers.com
Cc: Dana LePere <djlepere@gmail.com>; dancrabtree1@aol.com; nfinland@gmail.com; Darnell Lambey <d.lambey@yahoo.com>; Adam Aloï <adamaloi@yahoo.com>; Darnell Lambey <darnell@meddevelopers.com>; pac@harkinscunningham.com
Subject: Re: 2619 Wisconsin Ave NW - Checking-in

Bruce,

Happy to speak anytime. I can be available today or tomorrow as well as most days next week. What days and times work best for you?

Best regards,

Anita

On Sep 11, 2017, at 15:38, <bruce@meddevelopers.com> <bruce@meddevelopers.com> wrote:

Anita:

Let's start with a call..I will contact you this week and give you an update. You can decide if you want to schedule a meeting with the group based on that.

Look forward to that,

Bruce

From: Anita Mitra [<mailto:anitaliviamitra@yahoo.com>]
Sent: Monday, August 28, 2017 12:55 PM
To: bruce@meddevelopers.com
Cc: 'Dana LePere' <djlepere@gmail.com>; dancrabtree1@aol.com; nfinland@gmail.com;
'Darnell Lambey' <d.lambey@yahoo.com>; 'Adam Aloï' <adamaloi@yahoo.com>; 'Darnell
Lambey' <darnell@meddevelopers.com>
Subject: Re: 2619 Wisconsin Ave NW - Checking-in

Bruce,

I'd be happy to hear your plans and to figure out what the next steps should be regarding what group it would make sense for you to meet with.

Just FYI, since Malia Brink was elected to the ANC, I am the new MAHCA zoning coordinator and work closely with Paul Cunningham on all zoning issues.

Best regards,

Anita

(202) 375-1300

From: "bruce@meddevelopers.com" <bruce@meddevelopers.com>
To: 'Anita Mitra' <anitaliviamitra@yahoo.com>
Cc: 'Dana LePere' <djlepere@gmail.com>; dancrabtree1@aol.com; nfinland@gmail.com; 'Darnell
Lambey' <d.lambey@yahoo.com>; 'Adam Aloï' <adamaloi@yahoo.com>; 'Darnell Lambey'
<darnell@meddevelopers.com>
Sent: Sunday, August 27, 2017 7:54 PM
Subject: RE: 2619 Wisconsin Ave NW - Checking-in

Anita, Dana, et al:

Let's see if we can set up a conversation this coming month, as schedules get back to normal. We continue to refine our plans—all looks good, and would like to share those with you. Perhaps we get on the phone first and we can determine from that if another meeting with the group would make sense.

Looking forward to that,

Bruce

From: bruce@meddevelopers.com [<mailto:bruce@meddevelopers.com>]
Sent: Friday, February 3, 2017 5:41 AM
To: 'Anita Mitra' <anitaliviamitra@yahoo.com>
Cc: 'Dana LePere' <djlepere@gmail.com>; 'dancrabortree1@aol.com' <dancrabortree1@aol.com>; 'nfinland@gmail.com' <nfinland@gmail.com>; 'Darnell Lambey' <d.lambey@yahoo.com>; 'Adam Aloï' <adamaloi@yahoo.com>; 'Darnell Lambey' <darnell@meddevelopers.com>
Subject: RE: 2619 Wisconsin Ave NW - Checking-in

Anita:

Thanks for checking in. We continue to make good progress against our plan, which includes a redesign of the building(s). We are not at a point where we can share anything, but rest assured that we will fully engage with the group before we get too far into the planning.

Don't hesitate to remind us though..we don't mind!

Best,

Bruce

From: Anita Mitra [<mailto:anitaliviamitra@yahoo.com>]
Sent: Thursday, February 2, 2017 1:36 PM
To: Bruce <bruce@meddevelopers.com>

Cc: 'Dana LePere' <djlepere@gmail.com>; dancrabtree1@aol.com; nfinland@gmail.com;
'Darnell Lambey' <d.lambey@yahoo.com>; Adam Aloï <adamaloi@yahoo.com>
Subject: 2619 Wisconsin Ave NW - Checking-in

Hi Bruce,

Happy new year and thanks again for making the effort to meet with us on the evening of Friday, December 16th. Dan, I and our neighbors really appreciated it.

We discussed at the meeting that the next step would be for you to have an architect do some more detailed drawings so that we may get a better sense of the intended development (e.g. set-backs, access points, green space, etc.). Please let me know if those drawings are ready to be viewed or if there are any other updates regarding your planned development of the lot that we should be aware of.

Thanks very much and best regards,

Anita

Anita Crabtree

(202) 375-1300

anitaliviamitra@yahoo.com

From: Bruce <bruce@meddevelopers.com>
To: 'Anita Crabtree' <anitaliviamitra@yahoo.com>
Cc: 'Dana LePere' <djlepere@gmail.com>; dancrabtree1@aol.com; nfinland@gmail.com;
'Darnell Lambey' <d.lambey@yahoo.com>
Sent: Wednesday, December 7, 2016 12:29 PM
Subject: RE: 2619 Wisconsin Ave NW - Meeting with immediate neighbors

let me check, but I'm not sure we'll have the updated drawings and plans just yet..first of the year might be better for us.

Bruce

From: Anita Crabtree [<mailto:anitaliviamitra@yahoo.com>]
Sent: Wednesday, December 07, 2016 11:38 AM
To: Bruce
Cc: Dana LePere; dancrabtree1@aol.com; nfinland@gmail.com; Darnell Lambey
Subject: Re: 2619 Wisconsin Ave NW - Meeting with immediate neighbors

Hi Bruce,

It looks like Friday, December 16th in the evening works best for the most people. Does the 16th work for you and your team?

Best regards,

Anita

On Dec 6, 2016, at 5:46 PM, Bruce <bruce@meddevelopers.com> wrote:

thanks Anita, let me check with my folks as well.

Bruce

From: Anita Mitra [<mailto:anitaliviamitra@yahoo.com>]
Sent: Tuesday, December 06, 2016 2:09 PM
To: Bruce; 'Dana LePere'
Cc: dancrabtree1@aol.com; nfinland@gmail.com; 'Darnell Lambey'
Subject: Re: 2619 Wisconsin Ave NW - Meeting with immediate neighbors

Bruce,

Earlier today I sent you and your team a link to a doodle scheduler so we can pick a date to meet that works for most of the immediate neighbors. Please input your availability when you have a

chance. As soon as I have heard back from most people, I will send around a meeting invite for a meeting at our house.

Best regards,

Anita

From: Bruce <bruce@meddevelopers.com>
To: 'Anita Mitra' <anitaliviamitra@yahoo.com>; 'Dana LePere' <djlepere@gmail.com>
Cc: dancrabtree1@aol.com; nfinland@gmail.com; 'Darnell Lambey' <d.lambey@yahoo.com>
Sent: Tuesday, November 29, 2016 3:21 PM
Subject: RE: 2619 Wisconsin Ave NW - Meeting with immediate neighbors

Anita:

oops..make that the following week.

Bruce

From: Anita Mitra [<mailto:anitaliviamitra@yahoo.com>]
Sent: Tuesday, November 29, 2016 2:43 PM
To: Bruce; 'Dana LePere'
Cc: dancrabtree1@aol.com; nfinland@gmail.com; 'Darnell Lambey'
Subject: Re: 2619 Wisconsin Ave NW - Meeting with immediate neighbors

Bruce,

Apologies for the delay in getting back to you! Thank you for your message and explanation regarding the zoning meeting. I will get some additional dates from the neighbors and get back to you as quickly as possible about meeting in the next couple of weeks. Based on my last survey, it looks like an evening meeting would work best. Does that work for you and your team?

Thanks and best regards,

Anita

From: Bruce <bruce@meddevelopers.com>
To: 'Anita Mitra' <anitaliviamitra@yahoo.com>; 'Dana LePere' <djlepere@gmail.com>
Cc: dancrabtree1@aol.com; nfinland@gmail.com; 'Darnell Lambey' <d.lambey@yahoo.com>
Sent: Tuesday, November 15, 2016 8:43 PM
Subject: RE: 2619 Wisconsin Ave NW - Meeting with immediate neighbors

Anita:

my apologies..we had a meeting with zoning last week that was needed so that we had the most current info possible. We're waiting on their follow up responses, which we expect to get later this week, early next.

Can we try for the last week of Nov or first week in Dec? We should have ample info to share with you at that time.

Looking forward to it,

Bruce

From: Anita Mitra [<mailto:anitaliviamitra@yahoo.com>]
Sent: Tuesday, November 15, 2016 7:32 PM
To: Bruce; 'Dana LePere'
Cc: dancrabtree1@aol.com; nfinland@gmail.com; Darnell Lambey
Subject: Re: 2619 Wisconsin Ave NW - Meeting with immediate neighbors

Bruce,

Just following up on my below e-mail. Would you please send me the dates for a few evenings that work for you to have a meeting and I will let you know if any of those work for the immediate neighbors.

Thanks,

Anita

Anita Crabtree

anitaliviamitra@yahoo.com

(202) 375-1300

From: Anita Mitra <anitaliviamitra@yahoo.com>
To: Bruce <bruce@meddevelopers.com>; 'Dana LePere' <djlepere@gmail.com>
Cc: "dancrabtree1@aol.com" <dancrabtree1@aol.com>; "nfinland@gmail.com" <nfinland@gmail.com>; Darnell Lambey <d.lambey@yahoo.com>
Sent: Sunday, November 13, 2016 8:56 PM
Subject: Re: 2619 Wisconsin Ave NW - Meeting with immediate neighbors

Bruce,

Apologies for the delay in getting back to you with possible times for the meeting with immediate neighbors. I sent everyone about eight dates (in each case either at lunch time or after work) to choose from and the following are the two dates and times that work for the most number of people (just one neighbor would not be able to make each of these dates and times):

Tuesday, November 15, 2016 after work (e.g. 7 PM)

Monday, November 21, 2016 after work (e.g. 7 PM).

Please let me know if either of these days work for you and I will forward you a calendar invite with a list of the neighbors who will be attending. If neither of these dates works, I will send alternative dates.

Best regards,

Anita

Anita Crabtree

anitaliviamitra@yahoo.com

(202) 375-1300

From: Bruce <bruce@meddevelopers.com>
To: 'Dana LePere' <djlepere@gmail.com>
Cc: dancrabtree1@aol.com; 'Anita Mitra' <anitaliviamitra@yahoo.com>;
nfinland@gmail.com; Darnell Lambey <d.lambey@yahoo.com>
Sent: Wednesday, October 19, 2016 12:03 PM
Subject: RE: 2619 Wisconsin Ave NW

Dana:

many thanks for that..we appreciate any contact and feedback from the community. For your information and others, please know that our current planning process is open and transparent at all stages. This is no longer a District related process, so we are now in a position of control and communication. We want to ensure that everything is done to engage the neighbors and relevant stakeholders.

We would welcome an initial meeting with you and your group, including the Crabtree family. Perhaps meeting at the site itself (if weather requires it, we can meet inside the vacant house).

I will request your assistance in arranging to have the other folks join us..as my own familiarity with the neighbors is limited.

The first week of November would be good for us, Wed or Thursday would work.

Looking forward to that,

Bruce

Bruce Finland

Managing Member

From: Dana LePere [<mailto:djlepere@gmail.com>]
Sent: Wednesday, October 19, 2016 11:15 AM
To: bruce@meddevelopers.com
Cc: dancrabtree1@aol.com; Anita Mitra
Subject: 2619 Wisconsin Ave NW

Dear Bruce,

It has been brought to my attention that you have acquired the property at 2619 Wisconsin Ave NW and are seeking to develop it. As my neighbor Dan Crabtree (cc'd) previously expressed to you via email, I too will only support a development that is in keeping with the surrounding neighborhood.

Perhaps a meeting with the surrounding neighbors could be conducive to an agreeable plan? I look forward to hearing from you.

Best,

Dana LePere

2610 36th Place NW

202-333-4965

Tab B

----- Forwarded message -----

From: <bruce@meddevelopers.com>

Date: Tue, Feb 27, 2018 at 2:01 PM

Subject: RE: 2619 Wisconsin

To: <pac@harkinscunningham.com>

Cc: <anitaliviamitra@yahoo.com>, <asullivan@harkinscunningham.com>, <nfinland@gmail.com>

Paul:

Great to hear from you. Yes, let's get together next week..Tuesday or Thursday will work. We've got quite a bit to share with you and Anita.

Re "something afoot", I believe I know what you're referring to, and it doesn't have any possibility of getting done.

Bruce

From: pac@harkinscunningham.com [mailto:pac@harkinscunningham.com]

Sent: Tuesday, February 27, 2018 1:11 PM

To: Bruce <bruce@meddevelopers.com>

Cc: anitaliviamitra@yahoo.com; asullivan@harkinscunningham.com

Subject: 2619 Wisconsin

Hi, Bruce.

I've not heard from you in some time; I hope you are well.

Many neighbors are reporting that something is afoot at 2619 and asking questions that neither Anita nor I can answer. Might we - you, Anita, and I - get together by conference call or in person some time next week to review the status of your development efforts at the site?

Except for PM Monday, my schedule is so far very manageable.

Many thanks.

Best wishes,

pac

Paul A. Cunningham
Harkins Cunningham LLP
1700 K Street, NW Ste 400
Washington, DC 20006

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Tab C

DeBear, Eric J.

From: DeBear, Eric J.
Sent: Wednesday, August 15, 2018 6:24 PM
To: anitaliviamitra@yahoo.com
Cc: Moldenhauer, Meridith; pac@harkinscunningham.com; nmacwood@gmail.com
Subject: FW: BZA Case 19751 - MED Developers

Anita,

I am assisting Meridith on this matter. As she had mentioned, we are trying to accommodate multiple schedules to find a time that is best for everyone. August 29th worked for our client and Guest Services. There is already the ANC Subcommittee meeting on September 4th and it would be difficult to have Guest Services here for more than that night. Understanding that some people are on vacation in August, we are working to put together a "Webinar" link so that anyone who wishes to can login to hear any presentation and view a powerpoint, if there is one.

We are intending to reserve a room for the 29th. We hope to see as many community members as possible.

Thank you,
Eric



Eric DeBear
Attorney | Cozen O'Connor
1200 19th Street NW | Washington, DC 20036
P: 202-747-0769 F: 202-683-9394 C: 617-909-1052
[Email](#) | [Bio](#) | [Map](#) | [cozen.com](#)

From: Moldenhauer, Meridith [<mailto:MMoldenhauer@cozen.com>]
Sent: Monday, August 13, 2018 8:27 AM
To: Anita Mitra <anitaliviamitra@yahoo.com>
Cc: Paul Cunningham <pac@harkinscunningham.com>; nmacwood@gmail.com
Subject: Re: BZA Case 19751 - MED Developers

I will check with the team but working with multiple schedules and accommodating upcoming ANC meetings, the 29th is what worked. We want to make sure we have people from our team present to answer questions.

Currently, we have the 29th scheduled for representatives from Guest Services, the operator, to be present and able to answer questions. Guest Services has been serving the Greater Washington Area since 1917. While Guest Services started locally, they now service facilities nationwide. The company has extensive experience in many hospitality industries and started servicing senior living facilities in the 1970s.

We look forward to talking in more detail at a community meeting.

I will inquire about other days but it took us some time to schedule the 29th.

Meridith

Sent from my iPhone

On Aug 13, 2018, at 7:53 AM, Anita Mitra <anitaliviamitra@yahoo.com> wrote:

Meridith,

Thank you for getting back to me on this. Are there any later dates on which you and the operator are available to meet? While DCPS starts on August 20th, many private schools do not start until after Labor Day on either September 4th or 5th (Edmund Burke School, Georgetown Day School, National Cathedral School, Potomac School, Sidwell Friends, St. Albans, St. Patricks).

Would you also please share the name of the operator?

Thank you,

Anita

On Monday, August 13, 2018, 7:16:15 AM EDT, Moldenhauer, Meridith <MMoldenhauer@cozen.com> wrote:

Anita – We have coordinated with our team and our team is available to meet with the community on August 29th at 6pm or 7pm.

Seeing that DCPS starts on August 20th – so this should work for most people. We are finalizing a meeting location and will send that out to you shortly.

Meridith



Meridith Moldenhauer
Member | Cozen O'Connor
1200 19th Street NW | Washington, DC 20036
P: 202-747-0763 F: 202-683-9389 C: 202-246-7070
[Email](#) | [Bio](#) | [Map](#) | cozen.com

From: Anita Mitra [<mailto:anitaliviamitra@yahoo.com>]
Sent: Friday, August 3, 2018 10:52 AM
To: Moldenhauer, Meridith <MMoldenhauer@cozen.com>
Cc: Paul Cunningham <pac@harkinscunningham.com>; nmacwood@gmail.com
Subject: Re: Fwd: BZA Case 19751 - MED Developers

Hi Meridith,

We look forward to meeting with you to learn about the new operator. Will the operator also attend the meeting? I will be away as of tomorrow and a lot of other neighbors are currently away. People will be back when schools start, which will be between August 20th and early September after Labor Day. I think the impacted neighbors will most benefit from a meeting the first or second week of September. Does this work for you? If so, would you please send me dates that work for you and I will coordinate a meeting?

Regards,

Anita

From: Brink, Malia N. (SMD 3C08) [<mailto:3C08@anc.dc.gov>]
Sent: Wednesday, July 25, 2018 10:03 AM
To: Moldenhauer, Meridith <MMoldenhauer@cozen.com>
Cc: DeBear, Eric J. <EDeBear@cozen.com>; Nancy MacWood <nmacwood@gmail.com>; Anita Crabtree <anitaliviamitra@yahoo.com>
Subject: Re: BZA Case 19751 - MED Developers

I actually had to resign my post effective end of this month. We relocated out of the SMD. I would encourage you to meet with Nancy with regard to the ANC and Anita, with regard to the neighborhood. Both are copied here.

Malia

On Jul 25, 2018, at 9:46 AM, Moldenhauer, Meridith <MMoldenhauer@cozen.com> wrote:

Hi. I am back from vacation and would like to schedule an informal meeting to provide you with more information now that the operator is on board. Do you have time the 1st full week of August?

Meridith



Meridith Moldenhauer
Member | Cozen O'Connor
1200 19th Street NW | Washington, DC 20036
P: 202-747-0763 F: 202-683-9389 C: 202-246-7070
[Email](#) | [Bio](#) | [Map](#) | cozen.com

From: DeBear, Eric J.
Sent: Monday, July 16, 2018 2:23 PM
To: Brink, Malia N. (SMD 3C08) <3C08@anc.dc.gov>
Cc: Moldenhauer, Meridith <MMoldenhauer@cozen.com>
Subject: RE: BZA Case 19751 - MED Developers

Commissioner Brink,

Thank you for the confirmation. Are you available during the week of August 6th for a meeting or conference call to discuss the new operator? I would suggest grabbing a coffee if that works for you. Given that the ANC is not meeting, we would like to provide some of this information to you so we can determine if the ANC will need further information or if any new questions arise.

Thank you,

Eric



Eric DeBear
Attorney | Cozen O'Connor
1200 19th Street NW | Washington, DC 20036
P: 202-747-0769 F: 202-683-9394 C: 617-909-1052
[Email](#) | [Bio](#) | [Map](#) | [cozen.com](#)

From: Brink, Malia N. (SMD 3C08) [<mailto:3C08@anc.dc.gov>]
Sent: Thursday, July 12, 2018 4:15 PM
To: DeBear, Eric J. <EDeBear@cozen.com>
Cc: Moldenhauer, Meridith <MMoldenhauer@cozen.com>
Subject: Re: BZA Case 19751 - MED Developers

As noted previously we do not meet in August at all. Monday is our next meeting, and because of Labor Day it will likely be on Tuesday the 4th or Wednesday the 5th.

Malia

On Jul 12, 2018, at 3:42 PM, DeBear, Eric J. <EDeBear@cozen.com> wrote:

Commissioner Brink,

I am working with Meridith on our client's project at 2619-2623 Wisconsin Avenue NW. I wanted to reach out to confirm that the ANC's Planning and Zoning Subcommittee will be meeting on August 6th. I know that some ANC's do not meet in August.

Additionally, our client has selected an operator and we are currently working with the operator to provide further information to the community, as requested. We intend to have that information to you prior to the August 6th meeting.

Thank you,

Eric DeBear



Eric DeBear

Attorney | Cozen O'Connor

1200 19th Street NW | Washington, DC 20036

P: 202-747-0769 F: 202-683-9394 C: 617-909-1052

[Email](#) | [Bio](#) | [Map](#) | [cozen.com](#)

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Tab D

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18866-A on the Motion for Reconsideration and Rehearing of the Application of Planned Parenthood Association of DC, pursuant to 11 DCMR § 3103.2 for variances from court (§ 536) and parking (§ 2101.1) requirements, and pursuant to 11 DCMR § 3104.1 for a special exception for office use (§ 508), to allow a new mixed-use residential and commercial office building in the SP-2 District at premises 1108 16th Street, N.W. (Square 183, Lot 111).

HEARING DATE: December 2, 2014 and January 27, 2015

DECISION DATE: January 27, 2015

**RECONSIDERATION
DECISION DATE:** November 10, 2015

ORDER DENYING RECONSIDERATION AND REHEARING

By summary order issued February 4, 2015, (“Order”) the Board of Zoning Adjustment (“Board”) granted the application of Planned Parenthood Association of DC (“Planned Parenthood”) for the above-captioned relief. On October 15, 2015, Lesser Atlantic, LLC (“Lesser Atlantic”), the owner of property adjacent to the subject property at 1112 16th Street, N.W., filed a motion for reconsideration and rehearing (“Motion”). (Exhibit 45.)

The Motion claims that Lesser Atlantic did not receive notice of the public hearings on the application. The Motion states that the notice mailed pursuant to § 3113.13(b) never reached Lesser Atlantic and instead was returned and marked, “vacant, unable to forward.” According to Lesser Atlantic, the address to which the notice was sent was incomplete because it lacked a suite number. The Motion asserts that the Board should have conducted further investigation when the notice was returned. Lesser Atlantic further argues that the notice posted on the subject property pursuant to § 3113.15 was insufficient because that section requires posting at the property’s street frontage and on the front of each building, whereas, in this case, only the street frontage was posted. Lesser Atlantic contends that these deficiencies provide good cause under § 3100.5 for the Board to waive the requirements of § 3126.2. Under that provision, only a party may file a motion for reconsideration or rehearing, and such a motion must be filed within 10 days of the issuance of the Board’s written order. Neither requirement is met in this case. Lesser Atlantic asserts that the alleged notice deficiencies deprived it of its right to participate in the Board’s hearing or request party status, and prevented it from filing a timely motion.

Accordingly, Lesser Atlantic requests a waiver and asks the Board to reopen the record and schedule another hearing to allow Lesser Atlantic to present its objections to the project.

On October 22, 2015, Red A&W 1, LLC (“Red A&W”) ¹ filed an opposition to the Motion (“Opposition”). (Exhibit 47.) Red A&W argues that waiver of the party status requirement and 10-day filing deadline is not merited because there was sufficient notice of the application and because Red A&W would be prejudiced by a waiver as it had spent several months preparing to implement the approved project. The Opposition contends that the notice mailed to Lesser Atlantic was sufficient because, pursuant to the instructions on Office of Zoning Form 120, notice was mailed to the address for Lesser Atlantic on file with the D.C. Office of Tax and Revenue (“OTR”), which did not include a suite number. Red A&W argues that the most likely explanation for the notice being returned is not the lack of a suite number but that representatives for Lesser Atlantic were absent when the notice was mailed. Red A&W further argues that requiring additional investigation whenever a hearing notice is returned would impose an undue burden on the Board.

With respect to posted notice, Red A&W argues that, per longstanding Office of Zoning practice, only one notice was posted because the property has only one street frontage and is improved with only one building. Red A&W also contends that Lesser Atlantic should have been aware of the application because of media coverage of the project and notice posted for a hearing before the Historic Preservation Review Board (“HPRB”). Further, Red A&W asserts that an agreement that the prior owners of the two properties entered in 1940 grants Red A&W the right to increase the height of its building, as proposed by the project. Lastly, Red A&W argues that Lesser Atlantic’s Motion presents no objections to the Board’s Order on the merits and, thus, does not satisfy the standard for motions for reconsideration under § 3126.4.

On October 30, 2015, Lesser Atlantic filed a supplemental memorandum in support of its Motion, reiterating its argument for waiver and raising new arguments regarding the merits of the Board’s Order. (Exhibit 46.) On November 2, 2015, Red A&W submitted a response to Lesser Atlantic’s supplemental memorandum. (Exhibit 48.) On November 9, 2015, Lesser Atlantic filed a second supplemental memorandum in support of its Motion. (Exhibit 49.)

At a public meeting on November 10, 2015, the Board voted to deny Lesser Atlantic’s Motion.

CONCLUSIONS OF LAW

Under 11 DCMR § 3126.2, a party may file a motion for reconsideration or rehearing of a Board decision within 10 days after a final written order is issued. Here, Lesser Atlantic is not a party to the application, and it filed its Motion well beyond the 10-day deadline. Accordingly, Lesser Atlantic requests a waiver of the party status requirement and filing deadline under § 3100.5, which permits waiver “for good cause shown” if it “will not prejudice the rights of any party and is not otherwise prohibited by law.” The Board finds that the notice deficiencies Lesser Atlantic claims do not constitute good cause to support a waiver in this case.

¹ Red A&W purchased the subject property after the Board issued its Order. At its public meeting on November 10, 2015, the Board formally recognized Red A&W as a party to the case as the owner of the subject property.

First, mailed notice was sufficient. Subsection 3113.13(b) states, in relevant part, “[n]otice of the public hearing shall be given by . . . [m]ailing the notice to . . . the owners of all property within two hundred feet (200 ft.) of the [subject] property” Lesser Atlantic argues that mailed notice was inadequate in this case because it was sent to an incomplete address that lacked a suite number and was, thus, returned to the Office of Zoning and marked, “vacant, unable to forward.” Evidence in the record supports that the notice was mailed to an address with no suite number and was returned, as Lesser Atlantic alleges. (Exhibit 26, Returned Public Hearing Notice.) Lesser Atlantic contends that, upon discovering that the notice had been returned, the Board should have conducted further investigation into the matter. Red A&W argues that, pursuant to the instructions on Office of Zoning Form 120, notice was mailed to the address for Lesser Atlantic on file with OTR, which did not include a suite number. Red A&W further argues that requiring additional investigation whenever a hearing notice is returned would impose an undue burden on the Board.

The Board finds that § 3113.13(b) was satisfied in this case by mailing notice to the address for Lesser Atlantic on record with OTR, which did not include a suite number. (Exhibit 47, Attachment 5 to Addendum 3, OTR Online Record.) It is appropriate for the Board to rely on OTR records when providing mailed notice, and it is Lesser Atlantic’s responsibility to maintain an accurate address with OTR. Further, even if notice had not been properly mailed, Lesser Atlantic was given adequate notice through the other means provided under §§ 3113.13 through 3113.15, including posting notice on the subject property “in plain view of the public,” publishing notice in the *D.C. Register*, and mailing notice to Advisory Neighborhood Commission 2B. See *Application No. 18477 of Abdo 14th St. LLC* (2013); accord *Application No. 18732-A of WSD Capital LLC* (2014).

Second, there is not good cause to waive the requirements of § 3126.2 based on the notice posted on the subject property. Subsection 3113.15 requires posting “at each street frontage on the property involved and on the front of each building.” Lesser Atlantic argues that posted notice was inadequate because only the subject property’s street frontage was posted, not the building, as indicated in the record. (Exhibit 29, Aff. of Posting, Nov. 13, 2014; Exhibit 32, Aff. of Maintenance, Nov. 26, 2014; Exhibit 38, Aff. of Posting, Jan. 8, 2015.) Red A&W contends that the posting conformed to longstanding Office of Zoning practice when a property has only one street frontage and one building. In any event, Red A&W argues, Lesser Atlantic should have been aware of the application because of media coverage of the project and notice posted for an HPRB hearing. However, media coverage of the project and notice of an HPRB hearing are irrelevant to whether proper notice was given of the Board’s hearing. Regardless, the Board concludes that any posting deficiency was harmless in this case because it is unlikely that posting on the building would have alerted an interested passerby who missed the more prominent posting on the property’s street frontage. Further, as stated above, adequate notice was provided through other means as well. Accordingly, failure to post on the building does not constitute good cause to waive the party status requirement and 10-day filing deadline in this case.²

² Lesser Atlantic also argues that the alleged notice deficiencies violated its constitutional due process rights. However, the Board has no jurisdiction to decide constitutional questions. *Application No. 17504 of JMM Corporation* (2007).

Having denied the request for waiver, the Board need not reach the merits of the Motion.³

For all of these reasons, the Board hereby **ORDERS** that the motion for **RECONSIDERATION** and **REHEARING** is **DENIED**.

VOTE: 3-0-2 (Marnique Y. Heath, Frederick L. Hill⁴; and Peter G. May, voting to DENY; Jeffrey L. Hinkle absent; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. PARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 12, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

³ The Board did not consider the supplemental submissions filed by Lesser Atlantic and Red A&W. These submissions constitute reply and sur-reply briefs, which are not permitted in the Board's Rules of Practice and Procedure without the Board's leave, not requested here. *Application No. 17789-A of Walgreen Eastern Co. (2010)*.

⁴ Board member Hill read the full record in order to participate in the case and vote.

Tab E

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18732-A on the Motion for Reconsideration and Rehearing of the Application of WSD Capital LLC, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403, the side yard requirements under § 405.9, and nonconforming structure requirements under § 2001.3, for a second story addition to an existing one-family detached dwelling in the R-1-B District at premises 859 Venable Place, N.W. (Square 2971, Lot 39).

HEARING DATE: March 18, 2014
DECISION DATE: March 18, 2014
**MOTION FOR RECONSIDERATION
& REHEARING DECISION DATE:** April 15, 2014

ORDER DENYING RECONSIDERATION AND REHEARING

The order of the Board of Zoning Adjustment (the “Board”) approving the application of WSD Capital LLC (the Applicant) was issued on March 18, 2014. On March 18, 2014, a motion for reconsideration and rehearing was filed by Michael Sindram, who was not a party to the case. The Office of Zoning sent a letter dated March 19, 2014 to Mr. Sindram, noting that only a party may request rehearing and reconsideration and informing Mr. Sindram that he must seek a waiver of this requirement pursuant to 11 DCMR § 3100.5. On March 24, 2014 Mr. Sindram submitted a request to reopen the record and to accept an untimely filing.¹

In both motions, Mr. Sindram put forth the same arguments. First, he claimed that he did not receive mailed notice of the hearing. Next, he argued that the Board failed to provide reasonable public accommodation under the Americans with Disabilities Act (ADA) to allow him to testify by phone. Finally, Mr. Sindram indicated that the ANC meeting agenda provided an incorrect address for the Subject Property and attached ANC 4B’s agenda for February 24, 2014, which lists the address as 829 Venable Place.

¹ The request to reopen the hearing pursuant to § 3121.9 is not properly before the Board, as it was filed after the decision was rendered. Subsection 3121.9 provides the opportunity to enter testimony or evidence into the record after it has been closed, provided that the movant “demonstrate good cause and the lack of prejudice to any party.” If the Board grants a motion under this provision, the relevant evidence will be considered by the Board during the decision-making process.

BZA APPLICATION NO. 18732-A
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For the reasons discussed below, the Board found the arguments and evidence insufficient to support waiving the party status requirement for reconsideration or rehearing of the case.

CONCLUSIONS OF LAW AND DECISION

Pursuant to § 3126.2 of the Board's Rules of Practice and Procedure (Chapter 31 of Title 11 DCMR):

Any party may file a motion for reconsideration or rehearing of any decision of the Board, provided that the motion is filed with the Director within ten (10) days from the date of issuance of a final written order by the Board.

Under § 3100.5, the Board may waive the party status requirement of § 3126.2 where good cause is shown. Mr. Sindram claims that he did not receive mailed notice of the hearing, that the Board did not provide reasonable public accommodation to allow him to testify by phone, and that the ANC meeting agenda provided an incorrect address for the Subject Property. As a result, Mr. Sindram argues that he was not given proper notice about the public hearing, nor was he afforded a reasonable opportunity to testify. For the following reasons, the Board concludes that these arguments do not show good cause that would justify waiving the prohibition against filing a motion for reconsideration or rehearing by a non-party.

The Board finds that notice of the hearing was mailed to Mr. Sindram and that, even if it were not, adequate notice of the public hearing was provided through other means. As required by § 3113.13, the Director of the Office of Zoning provided notice not less than 40 days before the date of the hearing by "mailing the notice to the applicant and to the owners of all property within two hundred feet (200 ft.) of the property involved in the application." Mr. Sindram's address was included on the list of property owners to whom notice of the hearing was sent, as shown in Exhibit 7 of the record. In addition, the Board concludes that Mr. Sindram was given notice of the hearing through the other means required by §§ 3113.13 through 3113.15, such as, the posting of the notice on the Subject Property and publication of the notice in the *D.C. Register*.

As to Mr. Sindram's argument regarding the Board's failure to allow him to testify by phone, the Board does not allow anyone to testify by telephone. The Board notes that any person wishing to provide testimony may do so in writing. Written testimony is entered into the record and considered by the Board as it renders a decision, thus making the submission of written testimony a reasonable option for persons unable to appear at the public hearing. As to the motion's final argument, the error contained in ANC 4B's agenda did not impact the Board's proceedings and does not support the claim that Mr. Sindram did not receive proper notice of the Board's hearing or a reasonable opportunity to testify. Accordingly, the Board finds that Mr. Sindram's arguments do not show good cause that would justify the Board's waiver of the party status requirement for reconsideration and rehearing.

BZA APPLICATION NO. 18732-A
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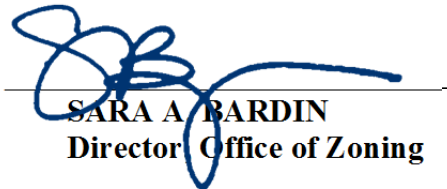
Nonetheless, if the Board were to waive the party requirement, the motion for reconsideration and rehearing must be denied, as Mr. Sindram does not address the requirements of § 3126. Pursuant to § 3126.4, “a motion for reconsideration shall state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought.” Under § 3126.6, the Board shall not consider a request for rehearing “unless new evidence is submitted that could not reasonably have been presented at the original hearing.” Neither motion addresses an error in the Board’s final decision, nor does either motion provide evidence that was not available at the time of the public hearing.

Accordingly, it is hereby **ORDERED** that the motion for **RECONSIDERATION** and **REHEARING** is **DENIED**.

VOTE: 3-0-2 (Lloyd J. Jordan, Jeffrey L. Hinkle, and Marnique Y. Heath to DENY; S. Kathryn Allen and the Zoning Commission member not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director Office of Zoning

FINAL DATE OF ORDER: October 27, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

Tab F

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18477 of Abdo 14th St LLC, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the building height setback requirements under subsection 1902.1(b), a variance from the off-street parking requirements under subsection 2101.1, and a special exception from the rear yard requirements under subsection 774.2, in the ARTS/C-3-A District at premises 1400-1404 14th Street, N.W. (Square 210, Lots 82, 102, and 800).

HEARING DATE: January 8, 2013

DECISION DATE: January 8, 2013

FINAL ORDER DATE: January 30, 2013

RECONSIDERATION

DECISION DATE: April 9, 2013

ORDER DISMISSING
MOTION FOR RECONSIDERATION, REHEARING, AND STAY

The order of the Board of Zoning Adjustment (“Board”) approving the application of Abdo 14th St LLC (“Applicant”) was issued on January 30, 2013 (“Order”). On March 4, 2013, a motion for a waiver of the Board’s rules for reconsideration and rehearing and for a stay of the Order (“Motion”) was filed by Gelman Management Company (“Gelman”), which had not requested party status. The motion itself does not indicate the time period for which a stay is requested. As will be explained, the Board concludes that the stay is sought during the pendency of the requested rehearing.

The waivers sought are from two preconditions to filing a motion for reconsideration and rehearing, namely that the motion must be filed by a party and must be filed within ten days after a final order is issued. The Applicant filed an Opposition to the Motion (“Opposition”) on March 14, 2013.

For the reasons set forth below, the Board found that Gelman failed to establish good cause to waiver either of these requirements and voted to dismiss the portion of the motion that requested reconsideration and rehearing. Since the motion only sought to stay the effectiveness of the order during the rehearing and since no rehearing will occur, the Board also dismissed the portion of the motion requesting the stay relief.

The Request for Waivers

Pursuant to § 3126.2 of the Board's Rules of Practice and Procedure (Chapter 31 of Title 11 DCMR):

Any party may file a motion for reconsideration or rehearing of any decision of the Board, provided that the motion is filed with the Director within ten (10) days from the date of issuance of a final written order by the Board.

As noted, the Order was issued¹ on January 30, 2013. Therefore, any party² who wished to file a motion for reconsideration was required to do so by February 11, 2013.³ A non-party could not file such a motion at all.

Gelman filed its motion for reconsideration and rehearing on March 4, 2013, well after this period had expired and, as noted, Gelman was not a party.

Pursuant to § 3100.5 of the Board's Rules, the Board may, for good cause shown, waive many of its rules, including the party and timelines requirements of § 3126.2. Gelman's claim of "good cause" for the Board to waive its prohibition against non-parties filing motions for reconsideration and rehearing is that it did not receive mailed notice of the hearing, and therefore was unable to avail itself of the opportunity to request and receive party status. The good cause claimed for waiving the ten day filing rule is based upon this same claimed lack of notice.

The Board concludes that Gelman received mailed notice of the hearing within the time period prescribed by the Board's rules and that even had it not, notice was given through the other forms of notice required by §§ 3113.13 through 3113.15.

Subsections 3113.13 through 3113.15 prescribe several different means by which notice of a Board public hearing is given. One of these is that the Director of the Office of Zoning must give such notice not less than forty days before the date of the hearing by "mailing the notice to the applicant and to the owners of all property within two hundred feet (200 ft.) of the property involved in the application." Gelman claims not to have been given this form of notice. The Board concludes otherwise.

¹ The Board rejects Gelman's contention that this time period started when it received a copy of the Order from the Office of Zoning. The language of the rule plainly calls for the ten day period to commence upon the "issuance" of a final order. The Board's rules cannot plausibly be read as allowing the time for filing a reconsideration motion to restart whenever the Office of Zoning responds to a request for a copy of a final order.

² No requests for party status were received by the Board. Therefore the only parties to this proceeding were the Applicant and ANC 2F.

³ The tenth day fell on a Saturday. When this is the case, the § 3110.2 of the Board's rules provide that a time period is extended to the next business day, which in this case was Monday February 11.

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First, the Board finds that the notice was mailed to Gelman's address. The Order states as much. Moreover Gelman does not deny that its correct name and address was provided by the Applicant to the Office of Zoning (Motion at 4) and the Board has no reason to doubt that the notice was mailed to that address. Gelman's claim that this did not occur is based solely upon two affidavits; one by an affiant "responsible for receiving and distributing mail" addressed to Gelman and the other by an affiant "responsible for reviewing and processing" such mail. Both claim to have "received no notice of any kind" about the application, yet neither offer any objective evidence to support these assertions, such as logs of mail received, processed, distributed, or reviewed. Therefore this attempt to prove a negative appears based only upon a lack of recollection. The Board concludes that the notice of the hearing was mailed to Gelman and that there is no credible evidence to suggest otherwise.

Even if the mailed notice was not sent, the Board concludes that Gelman was given notice of the hearing through the other applicable forms of notice required by §§ 3113.13 through 3113.15 including, but not limited to, the posting of the notice on the subject property "in plain view of the public", publication of the notice in the District of Columbia Register, and the mailing of the notice to Advisory Neighborhood Commission 2F, which hosted multiple meetings involving presentations by the Applicant, held a properly noticed hearing on the application, and ultimately voted in support of the Application. Contrary to the assertion made in the Motion, this is not "a case of first impression." Rather, the Board has on at least two occasions ruled that the absence of mailed notice does not warrant the continuation of a hearing when the other forms of notice were given. *See Application 16412 of Florida Avenue Partnership* (1999); *Application 15825 of David Dale* (1993).

Gelman does not dispute that the other notice requirements of §§ 3113.13 through 3113.15 were met. Instead, the Motion attempts to downplay the significance of the posting of the notice through the affidavit of Gelman employee Peter Kelly who states he is "responsible for multiple properties" and therefore was not in a position to view" and did not view "any posting on the adjacent property." The Board agrees with the Applicant that this statement is not credible given the large bright orange signs posted in plain view of the public.

The Board therefore finds that Gelman was given notice of the public hearing. Since the claimed lack of notice is the basis of the two waivers sought, both are denied.

The Request for to Stay

As noted, the motion to stay does not identify the proceeding to which the stay relates. The Board is aware that a petition for review of the Order was filed in the Court of Appeals on March 3, 2013 and that the proceeding has been held in abeyance pending the issuance of this decision. However, Gelman does not claim that this motion was filed pursuant to Court of Appeals Rule 18(a)(2)(ii), which provides that a "petitioner⁴ must ordinarily move first before the agency for a stay pending review of its decision or order." In addition, the Motion does not claim that a stay

⁴ Gelman is not the Petitioner.

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is warranted because the petition for review will succeed on its merits, but rather that Gelman will succeed on the merits of the Motion before the Board. For these reasons the Board concludes that the requested stay was predicated upon the Board's grant of a rehearing and was intended to remain in place during its pendency. Since the Board has dismissed the request for a rehearing, the associated stay request has been rendered moot and is also dismissed.⁵

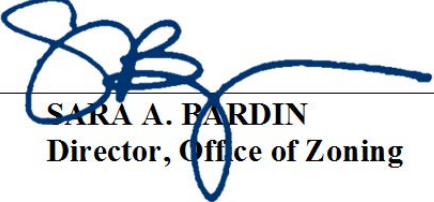
For the reasons stated above, it is **ORDERED** that the motion for reconsideration, rehearing, and stay is **DISMISSED**.

VOTE: **4-0-1** (Nicole C. Sorg, Jeffrey L. Hinkle, Lloyd J. Jordan (by absentee ballot), and Marcie I. Cohen (by absentee ballot) to Dismiss; No other Board member participating.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: September 26, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

⁵ Even if the stay was requested for the duration of the petition for review, the Applicant has demonstrated that Gelman has failed to meet the standard for the Board to grant such relief. *See* Opposition at pages 12-14.