

September 7, 2018

via IZIS

Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: BZA Application No. 19771- Response to ANC's Motion to Re-open the Record.

Dear Members of the Board:

On behalf of the Applicant, we respond to the ANC's "Motion" filed for the purpose of, in their words, cross-examination and for "conducting a further hearing on ... the matter of special exception versus variance requirements for placement of an accessory building in the rear yard setback." The request itself, regardless of the substance therein, is out of order as a matter of law, pursuant to the Board's rules of procedure, for the following reasons:

1) There is no procedure under which a party has the right to make a motion to re-open the record. Pursuant to Y-602.4, only the Board can reopen the record, on its own motion.

2) While the ANC labels this request a "Motion to Reopen Record," the substance and language of the request makes it clear that this is in fact a Motion for re-argument and reconsideration. The Board, however, is prohibited from receiving or considering any motion for reconsideration, rehearing, or re-argument of a Board decision in a contested case that is filed prior to an order being issued. The Order in this case has not been issued, so the Board is prohibited from receiving or considering this Motion, and the Board is explicitly without the power to waive this prohibition, pursuant to Y-700.3. The ANC gains no right that does not exist simply by mis-labeling its motion as a motion to reopen the record (which is also not permitted anyway).

For the Board to even consider this motion would open the door to endless motions from dissatisfied parties in the future, filed at any time prior to the issuance of a written Order. For this reason and the reasons stated above, the subject Motion should be pulled from the BZA agenda and rejected outright as an invalid attempt at filing.

Sincerely,

Martin P Sullivan

Martin P. Sullivan, Esq.
Sullivan & Barros, LLP
Date: September 7, 2018