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October 31, 2018

Frederick Hill, Chairman
Board of Zoning Adjustment
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

Re: BZA Case No. 19823 – Application of Wisconsin Avenue Baptist Church and Sunrise Senior Living for Special Exception and Variance Relief at 3920 Alton Place NW (Sq. 1779, Lot 14)

Dear Chairman Hill and Members of the Board of Zoning Adjustment:

On October 2, 2018, the undersigned counsel filed a request for party status on behalf of six neighbors (“Requesters”) who reside within 200 feet of the property that is the subject of the above-referenced application for special exception and variance relief. No opposition to this request was filed by the Applicant and therefore it must be deemed that the Applicants have no objection to their request. 11 DCMR Subtitle Y, § 404.8.

Three additional neighbors now seek to join the Requesters as individual parties in opposition to the above-referenced application. Accordingly, the Requesters hereby amend their request for party status to add these additional individual parties to their group. These additional parties intend to be part of a single coordinated opposition case along with the original Requesters, and all will be represented by the undersigned legal counsel, per the attached designation letters.

In response to the Applicants’ prehearing statement, filed on October 24, 2018, Requesters also amend their list of witnesses. The additional parties and witnesses are as follow:

(1) Additional individual parties.

The following individuals wish to be included as parties in opposition to the application:

Henry Hoyle and Laura Shen
3901 Yuma Street NW
Washington, DC 20016

Patrick E. Duffy, M.D.
3820 Yuma Street NW
Washington DC 20016

Each of these individuals resides and owns property within 200 feet of the property that is the subject of the application and would be adversely affected and aggrieved by the application in a manner that is different in character and in kind from the general public. Statements from these neighbors explaining the specific ways in which these individuals' use and quiet enjoyment of their homes will be adversely impacted, are attached.

In presenting their opposition case, Requesters propose to share time with Tenley Neighbors Association, which is a separate party in opposition. Requesters suggest that these two groups split the time allotted for parties in opposition equally.

(2) Additional Witness Information.

In response to the Applicants' prehearing statement, filed on October 24, 2018, Requesters hereby amend their list of witnesses to include the following additional witnesses:

Don Hawkins, expert in architecture (see attached CV) and/or Tom Moriarty, expert in real estate development strategies (see attached CV.)

Mr. Hawkins and/or Mr. Moriarity will testify that the Applicants cannot demonstrate that variance relief is required due to either "undue hardship" or "practical difficulties" within the meaning of D.C. Code § 6-641.07(g)(3) and 11-X DCMR § 1000.1. These witnesses will address the existence of development/disposition alternatives that do not require variance relief -- "a necessary element" in proving that variance relief is warranted to address claimed hardship by the property owner. *See Clerics of St. Viator, Inc. v. D. C. Bd. of Zoning Adjust.*, 320 A.2d 291, 294, 296 (D.C., 1974) (noting Applicants' burden of demonstrating "the inability of the applicant to make a reasonable disposition of the property for a permitted use." *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 542 (DC 1972) ("[I]t is certain that a variance cannot be granted where property conforming to the regulations will produce a reasonable income but, if not put to another use, will yield a greater return."). These experts will also testify that in this case, the exceptionally large size of the lot at issue (more than 35,000 square feet, which is seven times the minimum lot area applicable in the R-1-B zone district), does not demonstrate the lot in question is "substandard" and thus presents no "practical difficulty" due to its "smaller size or lesser frontage than the minimum." *Id.* The testimony of individual requesters will address these issues as well.

Which individual parties/witnesses testify at the hearing will depend on the time that the hearing on this application is called.

(3) Statement regarding Timeliness.

Requesters believe that this amended request for party status and supplemental information about

witnesses is timely as it is being filed 14 days in advance of the hearing on this matter set for November 14, 2018, as required by 11 DCMR Subtitle Y, § 404.3.

However, to the extent that this Board believes this request and additional information to be untimely based on the originally scheduled hearing date of October 10, 2018, the Requesters hereby move for a waiver of this rule based on good cause, including the delayed filing of the Applicants' prehearing statement, which would likewise be considered untimely under the same rationale.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. C. Ferster', with a large, stylized flourish at the end.

Andrea C. Ferster

Enc.

Certificate of Service

I hereby certify that, on October 31, 2018, a copy of the foregoing statement was served by email on the following:

Mary Carolyn Brown
Donohue and Stearns
Michael W. Cabrera
1750 K Street, N.W., 12th Floor
Washington, D.C. 20006

Judy Chesser, President
Tenley Neighbors Association
chesser1@rcn.com

Commissioner Jonathan Bender, Chair
ANC3E, c/o Lisner Home
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