



October 29, 2018

Meridith H. Moldenhauer

Direct Phone 202-747-0763
Direct Fax 202-683-9389
mmoldenhauer@cozen.com

Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

**RE: BZA Appeal No. 19877 and BZA Appeal No. 19895
Intervenor's Motion to Consolidate Appeals**

Chairperson Hill and Honorable Members of the Board:

On behalf of Intervenor D.C. Department of General Services ("DGS"), please find attached a Motion to Consolidate Appeal Nos. 19877 and 19895. As set forth in the Motion, the appeals concern the same parties, challenge the same decision of the Zoning Administrator, and are scheduled to be heard by the Board on the same date. Accordingly, there is good cause to consolidate Appeal No. 19877 and 19895, which will make the processing of these cases more efficient for the Board and DGS.

Thank you for your attention to this matter.

Sincerely,

Cozen O'Connor

A handwritten signature in blue ink, appearing to read 'MM', written over a horizontal line.

By: Meridith Moldenhauer

LEGAL\38889027\1

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2018 a copy of the foregoing Cover Letter with Motion to Consolidate Appeals was served, via electronic mail, on the following:

District of Columbia Department of Consumer and Regulatory Affairs
c/o Esther McGraw, General Counsel
1100 4th Street, SW, Ste. 5266
Washington, DC 20024
Esther.McGraw@dc.gov
Attorney for Respondent DCRA

Angela Bradbery
Nancy MacWood
Maureen Boucher
3700 39th Street NW, #F180
Washington, DC 20016
ANC3C06@anc.dc.gov
Nmacwood@gmail.com
Appellant in BZA Appeal No. 19877

Neighbors for Responsive Government
c/o Patricia Wittie and Arnold Lutzker
1233 20th Street NW, Ste. 703
Washington, DC 20036
Patwittie50@gmail.com
arnie@lutzker.com
Appellant in BZA Appeal No. 19895



Meridith H. Moldenhauer

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

**APPEAL OF
ANGELA BRADBERRY, ET. AL.**

BZA CASE NO. 19877

**APPEAL OF
NEIGHBORS FOR RESPONSIVE GOVERNMENT**

BZA CASE NO. 19895

**INTERVENOR D.C. DEPARTMENT OF GENERAL SERVICES’
MOTION TO CONSOLIDATE APPEALS**

Intervenor D.C. Department of General Services (“DGS”), the operator of the property that is the subject of these appeals, has filed a notice of intervention in the above-captioned cases. *See* BZA Case No. 19877, Ex. No. 9; *See* BZA Case No. 19895, Ex. No. 3. Now, DGS respectfully moves to consolidate BZA Appeal No. 19877 (the “ANC Appeal”) and BZA Appeal No. 19895 (the “NRG Appeal”) because both matters concern the same parties and challenge the same decision of the Zoning Administrator. Further, both the ANC Appeal and the NRG Appeal are scheduled to be heard by the Board on January 9, 2019. A consolidation of the ANC Appeal and the NRG Appeal will promote efficiency for both the Board and DGS by streamlining the process of adjudicating these cases.¹ The Board may decide this procedural motion without a hearing as permitted by Subtitle Y § 407.5 of the Zoning Regulations.

ARGUMENT

The ANC Appeal concerns the Ward 3 Short-Term Family Shelter (the “Project”) to be constructed at 3320 Idaho Avenue NW (the “Property”), which was previously approved by the Board of Zoning Adjustment (the “Board”) as part of BZA Case No. 19450.² During the permitting process, DGS requested that the Zoning Administrator for the Department of Consumer and

¹ DGS requested that Respondent D.C. Department of Consumer and Regulatory Affairs consent to this Motion to Consolidate Appeals, but DGS has not received a response to the request as of the filing date of this Motion.

² This case was appealed by Neighbors for Responsive Government (“NRG”) to the D.C. Court of Appeals. By decision dated October 18, 2018, the Court of Appeals affirmed the Board’s approval of BZA Case No. 19450.

Regulatory Affairs (“DCRA”) approve a modification to the Project’s architectural plans that had been approved in BZA Case No. 19450. Accordingly, pursuant to Subtitle A §§ 304.10-304.11, DGS submitted a “Request for Modification of Plans Approved by the BZA” (the “Request”) to the Zoning Administrator, which was subsequently approved by the Zoning Administrator on August 7, 2018. *See* BZA Ex. No. 3.

On September 13, 2018, ANC Commissioners³ Angela Bradbery, Nancy MacWood and Maureen Boucher (the “Appellants”) filed the ANC Appeal of the Zoning Administrator’s decision to approve the Request. *See* BZA Ex. No. 2. The Appellants’ primary argument concerns DGS’ modification to the play area for the Project. *See* BZA Ex. No. 2, pgs. 4-6. As stated on Form 125, the Appellants assert that “the modification we are appealing is the addition of an outdoor/patio deck.” *See* BZA Ex. No. 1. The ANC Appeal is scheduled to be heard by the Board on January 9, 2019.

In addition to the ANC Appeal, a second appeal of the Zoning Administrator’s approval of DGS’ Request was filed on October 5, 2018 by NRG, which is processed as BZA Appeal No. 19895. NRG is a nonprofit organization comprised of a group of neighbors opposed to the Project at the Property.⁴ As part of the NRG Appeal, NRG challenges a “decision of the Zoning Administrator concerning modifications to the plans for a short-term family housing facility” at the Property. *See* BZA Appeal No. 19895, Ex. No. 1, pg. 12. As with the ANC Appeal, NRG specifically challenges the addition of “a 25’ x 40’ patio to the south side of the” Project. *See* BZA Appeal No. 19895, Ex. No. 1, pg. 16. The Board is scheduled to hear the NRG Appeal on January 9, 2019.

³ Though filed as “Commissioners” Bradbery, MacWood and Boucher, the appeal was not initially filed on behalf of Advisory Neighborhood Commission 3C as a whole. However, on October 16, 2018, ANC 3C voted to support the appeal by a split vote of 4-3. *See* Ex. No. 8.

⁴ NRG also obtained party status as part of BZA Case No. 19450.

Therefore, the ANC Appeal and the NRG Appeal concern the same parties - DGS, ANC 3C, and NRG - and the same decision is being challenged: the Zoning Administrator's approval of DGS' Request regarding the Project at the Property. Further, the specific objection in the ANC Appeal – the “addition of an outdoor deck/patio” – is wholly included in NRG's objections in the NRG Appeal. NRG also includes challenges to the loading, the trash area, the basement, and other “architectural elements” of the Project, which are not included in the ANC Appeal. Both appeals are scheduled to be heard on the same day – January 9, 2019.

No parties will be prejudiced should the Board consolidate the ANC Appeal and the NRG Appeal. The Appellants will be fully permitted to present their case as part of the NRG Appeal. Notwithstanding, under Subtitle Y § 501.1(d), ANC 3C is automatically a party to the NRG Appeal. Indeed, Appellants filed the ANC Appeal in their capacity as ANC 3C Commissioners. *See BZA Ex. Nos. 1-2.* The Appellants have asserted no rights in their personal capacity that are distinctly effected in comparison to those asserted by NRG. Further, a consolidation of the ANC Appeal and the NRG Appeal will be significantly more efficient, as the Board will not have to hold separate hearings on the same day, which are likely to have substantially similar evidentiary and factual offerings. It follows that no parties would be prejudiced through the consolidation of the ANC Appeal and the NRG Appeal.

CONCLUSION

There is good cause to consolidate the ANC Appeal and NRG Appeal because the appeals concern the same parties, the same issues, and the same decision being challenged. A consolidation of these appeals will stream-line the cases and promote efficiency in the Board's processing of the appeals. Therefore, DGS respectfully requests that the Board consolidate the

ANC Appeal and the NRG Appeal. DGS further requests that the Board decide this procedural motion without a hearing pursuant to the Board's authority under Subtitle Y § 407.5.

Sincerely,
COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read 'M. Moldenhauer', is written over a horizontal line.

Meridith H. Moldenhauer