



January 7, 2019

Meridith Moldenhauer

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

**Re: BZA Case No. 19877 and BZA Case No. 19895
D.C. Department of General Services' Opposition to Postponement Request**

Chairperson Hill and Honorable Members of the Board:

Please consider this a response from the Department of General Services (“DGS”) to postponement requests from ANC 3C and Neighbors for Responsive Government (“NRG”). DGS does not consent to a postponement of the hearing scheduled on January 9, 2019 unless the terms of a Memorandum of Understanding (“MOU”) have been demonstrated to be acceptable to a majority of the members of the ANC and NRG, as the ANC will be in a position to vote on an actual agreement next week. Such demonstration could include emails indicating consent to the proposed language of the MOU. As noted in DGS’ Prehearing Statement, DGS has been working toward a resolution with ANC 3C and NRG. DGS is proposing the attached draft MOU. When finalized, the MOU will resolve the issues under appeal. Upon execution of this MOU by the District, the ANC and NRG, the ANC and NRG would withdraw the pending appeals. However, the District of Columbia strongly believes the Zoning Administrator did not err in approving the modification and will not agree to modify the Order in BZA Case 19450.

The MOU clearly reiterates the proffers negotiated, and either the MOU can be finalized prior to the upcoming hearing or there is no basis to postpone the hearing on January 9th.

Sincerely,

COZEN O'CONNOR

BY: Meridith H. Moldenhauer

LEGAL\39555256\1

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 2019 a copy of the foregoing Opposition to Postponement Request 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
Adrienne.Lord-Sorensen@dc.gov
Attorney for Respondent DCRA

Angela Bradbery
Nancy MacWood
Maureen Boucher
3700 39th Street NW, #F180
Washington, DC 20016
3C06@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

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into as of this ____ day of _____ 2019, by and between the District of Columbia, through the Department of General Services (“DGS”) and the Department of Human Services (“DHS”), Advisory Neighborhood Commission 3C (“ANC”), Councilmember Mary Cheh, and Neighbors for Responsive Government (“NRG”) regarding the property located at 3320 Idaho Avenue NW (the “Property”). DGS, DHS, the ANC, Councilmember Mary Cheh and NRG may be referred to herein individually as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, on April 5, 2017, the Board of Zoning Adjustment approved the application of DGS in BZA Case No. 19450, allowing DGS to construct a Short-Term Family Housing Shelter building (the “Project”) at the Property; and

WHEREAS, during the building permit process for the Project, DGS made minor modifications to the architectural plans and on August 7, 2018, the Zoning Administrator for the District’s Department of Consumer and Regulatory Affairs approved DGS’ request for minor modifications to the architectural plans in BZA Case No. 19450; and

WHEREAS, the ANC and NRG have appealed the decision of the Zoning Administrator to the Board of Zoning Adjustment in BZA Case Nos. 19877 and 19895 (the “Modification Appeals”); and

WHEREAS, the Parties desire to enter into this Memorandum of Understanding, as follows:

1. **Incorporation of Recitals:** The parties acknowledge the Recitals set forth above, which are adopted by reference and incorporated in their entirety as if set forth fully below.
2. **Conditions of the Proposed Deck:** As part of the Project, DGS shall incorporate the following design and use conditions for the proposed deck:
 - A. DGS will reduce the size of the proposed deck by 20% from the current 40’ x 25’ (1,000 square feet) to 40’ x 20’ (800 square feet).
 - B. DGS will add trees and shrubs around the proposed deck in order to create an additional noise buffer. The trees and shrubs will be approximately 20’ in width on the south side of the deck and approximately 6’-8’ in width on the west side of the deck.
 - C. The hours during which the deck can be used will be limited to 7:00 a.m. to 9:00 p.m. in accordance with D.C. Code § 22-1321(d).
 - D. Amplified or unreasonably loud music from any device played outside the proposed shelter building will be prohibited. “Unreasonably loud” music means sound that is above 60 decibels, which is the level established by the D.C. Parks & Recreation Permit Policies and Regulations.

E. Flood lights on the deck and playground will be prohibited.

- 3. Compliance:** Any and all complaints concerning compliance with the conditions set forth under Paragraph 2 shall be directed to the provider (the “Provider”) for the Project. Upon designation of a Provider, the contact information for the Provider shall be provided to the ANC and NRG in writing. The Provider shall address all complaints in an expedient fashion. The Provider shall review and respond to the complaint within twenty-four (24) hours of receipt of the complaint. During review of a complaint, if the Provider discovers noncompliance with a condition set forth under Paragraph 2, the Provider shall bring the condition into compliance as soon as possible but no less than five (5) business days from receipt of the complaint.
- 4. Complaint Resolution:** In the event the Provider does not reasonably comply with its obligations set forth in Paragraph 3, any Party may request, in writing, a dispute resolution meeting with DHS. A dispute resolution meeting request under this Paragraph shall be directed as follows: to the family services administrator at the Department of Human Services. Attendance at a dispute resolution meeting shall be mandatory for the complainants, DHS, and the Provider, and must occur within ten (10) business days of the written request.
- 5. Withdrawal of Appeal:** In exchange for DGS incorporating the design and use conditions of the deck set forth under Paragraph 2, the ANC and NRG shall file withdrawals of the Modification Appeals no later than five (5) business days from the date of this Memorandum of Understanding.
- 6. No Objection:** The ANC and NRG will not sue, challenge, contest, testify, or file any documentation in objection; whether administratively, judicially, or publicly; in connection with an application, approvals, permits, or other development rights granted by the Board of Zoning Adjustment or the Department of Consumer and Regulatory Affairs in connection with the Project.
- 7. All Terms:** This Memorandum of Understanding constitutes the entire understanding between the parties and supersedes any and all prior verbal or written understandings relating to the subject matter of this Memorandum.
- 8. Authority:** The Parties acknowledges that it, he or she: (a) has read this Memorandum of Understanding; (b) understands the terms and consequences of this Memorandum of Understanding. Any person or Party executing this Memorandum of Understanding has the legal authority to sign this Memorandum of Understanding and bind the person or Party for which he or she is signing.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding on the dates indicated below.

[SIGNATURE PAGE TO FOLLOW]

D.C. Department of General Services

By: _____

Title: _____

Date: _____

D.C. Department of Human Services

By: _____

Title: _____

Date: _____

Advisory Neighborhood Commission 3C

By: _____

Title: _____

Date: _____

Neighbors for Responsive Government

By: _____

Title: _____

Date: _____

Councilmember Mary Cheh

Date: _____