

**BOARD OF ZONING ADJUSTMENT**

**Washington, D.C.**

Appeal by:

**Case No. 20183**

The Residences of Columbia Heights, a Condominium

Appeal of Building Permit B1908601  
2500 14<sup>th</sup> Street, NW

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**APPELLANT'S OPPOSITION TO  
MOTION TO POSTPONE**

The Residences of Columbia Heights, a Condominium ("RCH"), Appellant in this zoning appeal, through undersigned counsel, submits this Opposition to the motion of the Department of General Services ("DGS"), now joined by the Department of Consumer and Regulatory Affairs ("DCRA"), to postpone the hearing in this case, currently set for January 29, 2020.

DGS filed and served the motion late in the evening of January 23, 2020, although it was due under Board Rule Y-302.17 no later than January 22, 2020, i.e., seven days before the hearing. DGS neither acknowledged its violation of the filing deadline nor sought a waiver of it under Rule Y-307.19. The motion is therefore untimely and should be denied on that basis.

On the merits, the motion should also be denied. First, DGS claims that the Department of Human Services ("DHS") Director Laura Zeilinger will be testifying at a D.C. Council hearing on the 29<sup>th</sup> and is thus unable to testify that same day before the Board, and her testimony "may be relevant to the merits of this case." DGS Motion at 1. This is not a sufficient reason for postponement. There is no claim that Ms. Zeilinger's personal testimony is necessary and could not be supplied by others, or even why testimony from anyone at DHS is necessary at all to resolve

this case, as matters related to DHS are not within the purview of the Board. RCH has presented two zoning interpretation questions in this appeal: (1) does the challenged permit authorize construction of an “emergency shelter” in violation of the special exception requirement in U-513.1(b); and (2) does the permit authorize a rear yard setback violation by improperly treating the new construction as part of the existing structure on the Property? It is unlikely that Ms. Zeilinger could present relevant testimony on either of these legal issues.

Second, DGS counsel requests additional time to prepare for the hearing to present a prehearing statement, i.e., the one that was due no later than January 22, 2020. It is unlikely, however, that counsel’s prehearing statement would be substantively different from that submitted by DCRA, whose position and interests are closely aligned with those of DGS. Moreover, DGS’ counsel’s motion papers make plain that she was contracted by DGS to oppose RCH’s legal claims in May 2019 and has thus been conversant on the issues for quite some time. In any event, there is no claim that DGS/DCRA will be prejudiced by denial of the motion, such as being denied effective representation, nor that the Board will be deprived of hearing any and all arguments DGS/DCRA may wish to present in opposition to the appeal.

Third, without explanation, DGS asserts that its motion to dismiss on timeliness grounds “should be bifurcated from the hearing on the merit[s].” Motion at 1. RCH certainly agrees that the timeliness motion should be addressed first. If the Board finds the appeal untimely, further hearing on the merits becomes moot. Otherwise, the merits should be heard, and DGS presents no reason for a bifurcated hearing in that event.

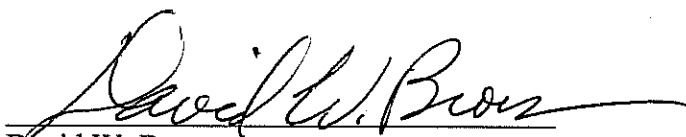
Finally, it would be prejudicial to RCH for the hearing on the merits to be postponed. Five RCH witnesses (and numerous other residents of the RCH association) have rearranged their schedules to participate in the long-scheduled hearing, and a rescheduling could easily lead to a

diminished RCH presentation at a postponed hearing. (DCRA has also prepared for the hearing and only filed an untimely concurring motion to postpone as of January 27, 2020.) Indeed, such prejudicial disruptions are exactly why there must be good cause for a postponement when the adversary party is ready to proceed.

### CONCLUSION

For the foregoing reasons, the motion to postpone the hearing from January 29, 2020, to any later date should be denied.

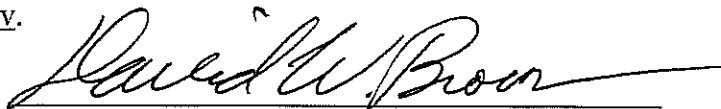
Respectfully submitted,



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### CERTIFICATE OF SERVICE

IT IS CERTIFIED that this 27<sup>th</sup> day of January 2020 (or as soon thereafter as the BZA approves the filing), two paper copies of the Appellant's Opposition to Motion to Postpone was mailed, first class, postage prepaid to the Office of Zoning, and on this 27<sup>th</sup> day of January 2020, one copy was mailed, first class, postage prepaid or sent via email, to the applicant and owner of the building permit, Department of General Services, 1250 "O" Street, NW, Washington, DC 20009 [dgs@dc.gov](mailto:dgs@dc.gov); and Advisory Neighborhood Commission 1B, Suite #100 B, 2000 14th Street NW, Washington, DC 20009, [1b09@anc.dc.gov](mailto:1b09@anc.dc.gov); Advisory Neighborhood Commission 1B Chairperson 1B06, [1B06@anc.dc.gov](mailto:1B06@anc.dc.gov); Commissioner Jen Bristol, who represents the Single Member District, [1B06@anc.dc.gov](mailto:1B06@anc.dc.gov); and Hugh J. Green, Esq. 1100 4<sup>th</sup> Street, SW, 5<sup>th</sup> Floor, Washington, DC 20024 [hugh.green@dc.gov](mailto:hugh.green@dc.gov).



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