

February 7, 2020

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Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
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**RE: BZA Appeal No. 20183
DGS' Motion to Strike Evidence in the Record**

Chairperson Hill and Honorable Members of the Board:

Intervenor DC Department of General Services (“DGS”) hereby moves to strike evidence submitted by Appellant, Residences of Columbia Heights, a Condominium (the “Condominium”) concerning matters that are not within the Board’s jurisdiction in this appeal. A Motion to Strike is attached at **Tab A**.

In review of an appeal, the Board of Zoning Adjustment (“Board”) must determine whether the Zoning Administrator or another administrative body made an error “in the administration or enforcement of the Zoning Regulations.” *See* Subtitle X § 1100.2. Therefore, the Board “has no jurisdiction to hear and decide any appeal or portion of any appeal where the order, requirement, decision, determination, or refusal was not based in whole or in part upon any zoning regulation or map.” *See* Subtitle X § 1100.3.

In connection with its argument concerning the “single building” and rear yard requirement, the Condominium submits evidence that is irrelevant or not germane to this appeal. Specifically, the Condominium’s PowerPoint presentation outlines arguments concerning: (1) snowdrift; (2) carbon monoxide build-up; (3) loss of light; and (4) enclosed fresh air intake. *See* BZA Exhibit No. 36, pg. 13-14, 31-37. Snowdrift and carbon monoxide are regulated under the Building Code, not the Zoning Regulations. Under Subtitle X § 1100.3, such issues are expressly outside the Board’s jurisdiction in this appeal.

Further, although potentially germane to a zoning application for a special exception or variance, matters pertaining to loss of light and impacts to fresh air intake are immaterial in this appeal. DGS is constructing the Ward 1 Short-Term Family Housing building as a by-right structure and use. DGS has not filed for zoning relief and is not required to meet a special exception/variance standard or demonstrate minimal impacts to light and air. Accordingly, evidence concerning impacts to the Condominium’s light and air are extraneous factors in the Board’s review of the zoning decision in this matter, unless the Board determines special exception relief is potentially necessary or appropriate.

Therefore, good cause exists to strike evidence in the record concerning matters outside the Board's jurisdiction, including in the Condominium's PowerPoint presentation at BZA Exhibit No. 36, pg. 13-14, 31-37, and any such evidence that may be presented by the Condominium at the Board's hearing on February 26, 2020. Thank you for considering these points in this matter.

Sincerely,

Cozen O'Connor



By: Meredith H. Moldenhauer

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January 2020 a copy of the foregoing Motion to Strike was served, via electronic mail, on the following:

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