

LAW OFFICES OF
KNOPF & BROWN
401 EAST JEFFERSON STREET
SUITE 206
ROCKVILLE, MARYLAND 20850
(301) 545-6100

FAX: (301) 545-6103
E-MAIL BROWN@KNOPF-BROWN.COM
WRITER'S DIRECT DIAL
(301) 545-6105

DAVID W. BROWN

SOLE PRACTITIONER (2017)

February 14, 2020

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

Re: **Appeal of Building Permit B1908601**
BZA Case No. 20183 -- 2500 14th Street, N.W.

Dear Chairperson Hill and Members of the Board:

Appellant, The Residences of Columbia Heights, a Condominium, hereby responds to the motion to strike filed in the captioned matter by the Department of General Services ("DGS"), on February 7, 2020. The motion is without merit and should be denied.

DGS claims Appellant has submitted "evidence that is irrelevant or not germane to this appeal." Ex. 64 at 1. DGS claims that Appellant has made "arguments concerning (1) snowdrift; (2) carbon monoxide build-up; (3) loss of light; and (4) enclosed fresh air intake." *Id.*

This claim is factually incorrect and has no legal foundation. Appellant has claimed in this case that DGS's project violates a rear yard setback requirement, in that its intention is to construct the building with zero setback from Appellant's condominium. That is a contested claim in this case; it is plainly within the Board's purview to decide. None of the four matters itemized by DGS for deletion is a claim of error before the Board; all of them are simply described as consequential injurious effects of the claimed setback violation.

There is nothing improper in advising the Board of the injurious effects of a claimed violation of the Zoning Regulations. Indeed, Appellant is obliged, in demonstrating standing to appeal, to explain how it has been injured by any claimed violation. Moreover, noting injurious effects does not in any case bring adjudication of remediation of those effects into the case. All the Board has been asked to do is evaluate issues germane to the setback violation claim. Appellant has separately presented its Building Code concerns to DCRA and DGS in the form of an appeal currently pending in the Office of Administrative Hearings.

Board of Zoning Adjustment
District of Columbia
CASE NO.20183
EXHIBIT NO.76

Frederick L. Hill, Chairperson
and Members of the Board
Board of Zoning Adjustment
February 14, 2020
Page 2

Further, DGS acknowledges that “matters pertaining to loss of light and impacts to fresh air intake” may be “germane to a zoning application for a special exception . . .” *Id.* Of course, whether DGS improperly failed to seek a special exception before obtaining a building permit is one of the two central issues in this case. In effect, DGS admits that Appellant’s concerns about injurious effects from the claimed setback violation are also concerns germane to its violation of the requirement to obtain a special exception prior to permitting.

For the foregoing reasons, DGS’s motion to strike should be denied.

Very truly yours,

A handwritten signature in black ink that reads "David W. Brown". The signature is written in a cursive style with a long horizontal flourish extending to the right.

David W. Brown
Attorney for Appellant

cc: See attached Certificate of Service