

**DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**

**Applicant's Response to Party Status Opposition**  
**BZA # 20603 - 1709 17<sup>th</sup> Street, NW; Square 178 Lot 87**

**I. OPPOSITION TO GRANTING OF PARTY STATUS.**

In almost every case, a party status request from an abutting neighbor is granted. The Applicant believes that this is a case for which the party status request should be denied. The building wall currently abutting the Applicant's side property line is illegally constructed, with "at-risk" openings, which violate several provisions of the Zoning Regulations, including the recently-approved BZA Order No. 20042. The openings may also violate safety-related Building Code provisions regarding openings in exterior walls, and we have found no covenant for this condition, as required pursuant to the Building Code.

DCRA has confirmed that the party applicant's BZA-approved plans for its building at 1641 R Street, NW (the "1641 Building"), as well as the corresponding building permit, provided a nearly 9-foot set back between the 1641 Building and the Applicant's side property line (the "Proposed Addition") to the north, on levels two (2) through four (4). The party applicant (the "Party Applicant") was granted relief for lot occupancy, among other relief, in #20042. The Applicant in the present case supported his neighbor's BZA application and has cooperated with the Party Applicant like any good neighbor would, including providing access across his property for the purpose of building what turned out to be unpermitted work.

The Party Applicant currently has a building permit application pending which will not be approved without additional BZA relief. Despite the lack of such a permit, the Party Applicant has extended its rear wall on Floor 2-4 approximately four (4) feet beyond what the BZA approved

and then added what some call balconies, but what appear to be just an extension of the building with large openings on the exterior wall, and this structure reaches the abutting property line.

Now comes Party Applicant claiming that this Applicant should not be granted its relatively minor special exception relief request because Party Applicant is somehow entitled to the air and space on the Applicant's property, by virtue of the existence of the blatantly illegal construction which eliminated what was supposed to be a 9-foot setback. The Party Applicant and many opponents, including the ANC, have ignored Applicant's protestations about the illegal construction on the 1641 Building, and some have accused the Applicant of being dishonest and derogatory for daring to object to the illegal construction, the illegality of which has since been confirmed by DCRA. The Party Applicant has acted in bad faith, both in its disregard for the previous decision of this Board, and then for using the ill-gotten extension as a means of obstructing reasonable *lawful* expansion abutting that extension. The Party Applicant should not be allowed to make an argument for distinctive harm when the central element of that argument was not lawfully approved and is currently subject to removal. The Party Applicant has made a mockery of the BZA process and threatens to do so again with this opposition. Its actions should not be rewarded with party status.

## **II. RESPONSE BASED ON BZA APPROVED PLANS.**

The Party Applicant's BZA approved plans show a setback from the Subject Property's side lot line (to the north) of eight feet, eleven inches, on the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> levels. The Applicant is herewith submitting additional plan pages which show the relationship between the Applicant's proposed addition (the "Proposed Addition") and the Party Applicant's BZA approved plans, including a refutation of the "blue tape" photo submitted by the Party Applicant, which

substantially misrepresented the height of the Applicant's Proposed Addition in relation to the illegally constructed portion of the 1641 Building.

These drawings show that when Party Applicant eventually pulls back its building and complies with its BZA approved plans, one single row of two windows on the 1641 Building would face the side building wall of the Proposed Addition. That building wall would be nearly nine feet (9 ft.) away from those windows and topping off at the top of that second level. The windows on the third and fourth levels of the 1641 Building would not face any portion of the Proposed Addition. Because the Proposed Addition is north of the 1641 Building, and light is already impacted by the nature of the building configuration at the rear of these buildings, and because any shadow on those windows comes from the 1641 Building itself primarily, and because these windows are provided with nearly nine feet of space between them and the Proposed Addition, granting this relief will not tend to affect adversely the use of the 1641 Building.

The BZA has found on a number of occasions that it is well-settled in the District of Columbia that a property owner is not entitled to a view across another person's property without an express easement. See BZA Order No. 18787 citing No. 18330. The applicant has already discussed how the proposed addition meets the general and specific criteria for special exception approval. The proposed addition would not adversely affect the use of 1641 at all, once the 1641 Building is corrected to and is in compliance with its BZA approval and its issued permit.

### **III. AT-RISK OPENINGS**

If the Board were to consider this request under the presumption that the aforementioned illegal construction will remain, then the Party Applicant may not use the existence of at-risk openings to infringe upon the right of the Applicant to seek and enjoy the approval of a special

exception request which otherwise complies with all applicable criteria, as if the at-risk windows were not there.<sup>1</sup>

In choosing to build this construction with at-risk openings, the Party Applicant bears the risk that there will be adjacent construction, which means it has no legitimate right to object to the Applicant building along its side property line in that same area. Party Applicant chose to build openings directly on Applicant's side property line, for the full height of their building, leaving all of their condo buyers or tenants with the risk of losing whatever open space they may have had if Marwick had followed their BZA-approved plans.<sup>2</sup> Now, after using every inch of its property, even beyond the BZA-approved limits, maximizing its FAR and perhaps beyond depending on the amount of illegal construction, and including a full penthouse, Party Applicant believes that the Applicant here must sacrifice its right to receive special exception relief, for Party Applicant's financial benefit. The at-risk openings do not entitle Party Applicant to claim now that the Proposed Addition adversely affects the use of its property. If the 1641 Building had been renovated according to BZA approved plans, the Proposed Addition would not affect Party Applicant's use of its property at all. The choice to extend and build at-risk windows should not alter that conclusion.

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<sup>1</sup> If one's choice to locate at-risk windows on an abutting property line should not infringe on the neighbors right to use and develop its property, that principle should apply to the neighbor's right not only to matter of right development but also to its right to special exception relief. The concept is the same and the Board has followed this concept, in particular in allowing the blocking of thirty (30) apartment building windows, in favor of 100% rear yard relief, in BZA Case No. 19586.

<sup>2</sup> Despite the 1641 Building's openings of exterior walls on and near the Applicant's lot line, Applicant's search of the Recorder of Deeds site found no covenant, which is typically a condition of approving such construction.

Applicant's Statement  
1709 17<sup>th</sup> Street, NW

Respectfully Submitted,

*Martin P Sullivan*

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