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December 14, 2022

Attorney Vincent J. Bobot, Chair
Administrative Review Board of Appeals
524 E. Layton Avenue
Milwaukee, Wisconsin 53209

VIA EMAIL in c/o:
lelmer@milwaukee.gov

RE: File #22141 – Appeal by Suzanne Spenner-Hupy Of Historic Preservation Commission Decision

Dear Attorney Bobot:

I write on behalf of Suzanne Spenner-Hupy in response to the December 2, 2022 letter submitted by the Milwaukee City Attorney's Office ("CAO"). It is our position that the opinions expressed therein to the effect that the Administrative Review Board of Appeals ("ARBA") should not hear Spenner-Hupy's request for review is misguided and, more importantly, totally sidesteps the question presented to it as to whether ARBA even has authority to hear and decide this type of matter.

As the COA's letter sets forth, it is clear that Chapter 68 of the Wisconsin Statutes and Milwaukee City Ordinance 320-11 collectively *do*, in fact, provide for an independent review of initial determinations made by a city commission, and that is without regard to whether the person requesting the review brought it first to the original body, in this case the Historic Preservation Commission ("HPC), *unless such failure has caused prejudice to the municipal authority.* Wis. Stat § 68.08 (emphasis added). No such prejudice is alleged or argued here by the CAO. On the opposite side of the coin, there are a wealth of examples which show a demonstrated bias against Spenner-Hupy by the HPC when granting the Certificate of Appropriateness that gave rise to this matter, and it is unquestionable that a request for review by that same body would have been utterly pointless in light of same. These displays of bias have been set forth in detail in our previous submissions to ARBA (*see* file document #9, pages 10-12).

Per MCO 320-11, the duty and responsibility of ARBA is to "hear appeals from initial administrative determinations or decisions of ... commissions of the city and make a final determination thereon." Where there is a clear bias demonstrated on the part of the initial decision maker, ARBA is the only administrative entity from which an aggrieved party can seek a fair review.

Without justification for the conclusions reached, the CAO summarily opines that Spenner-Hupy does not have any due process rights with regard to the HPC's determination and, perhaps more bizarrely, that she is not an "aggrieved person" whose rights, duties, or privileges were adversely affected by said determination. With all due respect to the CAO, this is illogical.

As a resident of the North Lake Drive Estates Historic District, and owner of a property immediately adjacent to the one for which the Certificate of Appropriateness was sought, Spenner-Hupy obviously has not only the right and privilege to use and enjoy her own property, but she also has a right to ensure that the requirements of the District's Study Report adopted by the Common Council are not violated and/or outright ignored by HPC. In this matter, that is exactly what occurred when HPC granted a Certificate of Appropriateness despite the undeniable fact that the proposed project does not comply with the Study Report's applicable limitations on square footage for additional structures and accessory buildings as we have previously demonstrated (*see* file document #9, pages 7-10).

We respectfully request that ARBA provide a fair and independent review of HPC's determination, after which we are confident that reversal or modification will be deemed both appropriate and legally necessary.

Very truly yours,

HUPYandABRAHAM, S.C.

Timothy W. Schelwat
TWS/ms