RE: PETITION FOR VARIANCE 11 Lynbrook Road Lucky Star, LLC, Legal Owner, Petitioner.	)))))))	**BEFORE THE BOARD OF APPEALS** **FOR BALTIMORE COUNTY** **CASE NO. 2021-0109-A**

PETITIONER LUCKY STAR LLC'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT AND PREHEARING STATEMENT

Petitioner, Lucky Star, LLC, by and through its attorney, Dino C. La Fiandra, Esquire and The Law Office of Dino C. La Fiandra, LLC, responds to People's Counsel's Motion for Summary Declaratory Judgment and Prehearing Statement, and states:

1. Petitioner seeks a variance from BCZR § 400.3 (Accessory Buildings in a Residential Zone / Height) to permit an accessory structure (garage) of 20 feet in height in lieu of 15 feet otherwise allowed.
2. On July 20, 2021, after a public hearing, the ALJ dismissed the Petition for Variance as moot, concluding that BCZR §400.3 does not apply to the case at bar because the accessory structure is located within a commercial zone, and by its terms, BCZR, §400.3 only applies to residential zones.
3. On August 9, 11, and 13, People's Counsel filed and supplemented a Motion for Reconsideration of the ALJ's dismissal of the Petition for Variance. In its Motion for Reconsideration, People's Counsel stated it did not oppose the variance sought by the Petitioner, but it objected to the legal basis upon which the ALJ found that BCZR, §400.3 does not apply to the accessory structure at issue. Therefore People's Counsel objected to the dismissal to the Petition. People's Counsel raised substantive and procedural issues. The Petitioner responded and did not oppose the Motion for Reconsideration. Instead, in its response, the Petitioner advanced the factual elements proven to the ALJ

at the zoning hearing which entitled the Petitioner to variance relief from the height limit of BCZR §400.3, namely that the property in question is unique and that the Petitioner will experience a practical difficulty if the variance relief is not granted.

4. Thereafter, on September 9, 2021, the ALJ granted People's Counsel's Motion for Reconsideration. Upon reconsideration, instead of dismissing the Petition, the ALJ found the property to be unique and that the Petitioner would suffer a practical difficulty if the variance relief were not granted. Accordingly, the ALJ granted the variance for an accessory garage of 20 feet in height in lieu of 15 feet other allowed.
5. Still not satisfied with the ALJ's ruling, People's Counsel appealed to the Board of Appeals. This *de novo* appeal followed.
6. Petitioner's <u>sole</u> goal in this case is to secure the height variance for which it has applied. To that end, Petitioner intends to present evidence to the Board at the hearing in this matter that the Property is unique, and that the Petitioner will experience practical difficulty if the variance were not granted.
7. Petitioner does not intend to advance the legal theory that BCZR, §400.3 (Accessory Buildings in Residential Zones) does not apply in this case.
8. Nonetheless, People's Counsel seeks a declaration from this Board that BCZR, §400.3 (Accessory Buildings in Residential Zones) applies to accessory structures in non-residential zones as stated in its Motion for Summary Declaration. Petitioner neither opposes nor consents to any such declaration by Board and Petitioner leaves the propriety of any such declaration to the judgment of the Board.
9. As a procedural matter, state law and the County Charter require that the Board make findings of fact and conclusions of law based on evidence of record after a hearing. Accordingly, any such declaration, if there is to be one, must come after the hearing in

this case and the presentation of evidence by the Petitioner. See, Md. Code, Local Government Art., § 10-305(a)(4) and Baltimore County Charter, § 603(d).

10. Petitioner is confident that the evidence will show that the Property is unique, that practical difficulty will result if the variance is not granted, and that the variance may be granted within the spirit and intent of the zoning regulations.

11. Petitioner reserves further comment and response to the Motion for Declaratory Judgment for its opening statement at the hearing in this matter.

Respectfully submitted,

February 14, 2022
Date

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Certificate of Service

I certify that on February 14, 2022, I sent a copy of the foregoing Response by email to Peter M. Zimmerman, People's Counsel for Baltimore County at peoplescounsel@baltimorecountymd.gov.

Dino C. La Fiandra