Selig Solomon, Esquire

21 Penny Lane
Baltimore, MD 21209-2723

Phone: 410-484-2529
Fax: 410-484-7321
Email: shazam@erols.com

September 24, 2003

RECEIVED
D.C. BOARD OF ZONING
2003 SEP 25 PM 3:58

Geoffrey Griffis
Chairperson
Board of Zoning Adjustment
441 4th Street, NW
Room 210
Washington, DC 20001

Re: Appeal No. 17085

Dear Mr. Griffis:

Please be advised that this firm represents Folger Park North, LLC, which is the developer in the above noted appeal.

The appeal as submitted to you on or about September 12, 2003 cannot lawfully be accepted by the Board of Zoning Adjustment, due in great part to the fact that the proposed appeal, by the Appellant's own admission on page 8, paragraph 3 of their "statement in support of the appeal" was knowingly submitted outside of the sixty day filing deadline as set forth in Section 3112.2 of the zoning regulations and does not meet any of the definitions for extensions as the code specifically states:

> The Board may extend the sixty-day deadline for the filing of an appeal only if the appellant demonstrates that:
>
> (1) there are exceptional circumstances that are outside of the appellant's control and could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board, and
> (2) ***the extension of time will not prejudice the parties to the appeal, as identified in 3119.1.***

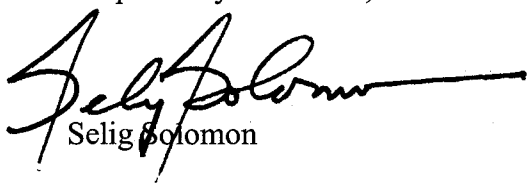
Clearly, in whole and in no small measure due to the *erroneous and defamatory allegations* contained in the appeal, it has already caused considerable damage to my clients, as further detailed in the copy of the letter to Mr. Denzil Noble, which is attached hereto. In addition to the high costs already incurred the damage may soon be irreparable

BZA
Case No. 17085
Exhibit No. 37

Board of Zoning Adjustment
District of Columbia
CASE NO. 17085
EXHIBIT NO. 37

from the Stop Work order. My clients are being prejudiced in these proceedings, all without the benefit of due process.

Respectfully submitted,



Selig Solomon

Cc: Folger Park North, LLC

Selig Solomon, Esquire

21 Penny Lane
Baltimore, MD 21209-2723

Phone: 410-484-2529
Fax: 410-484-7321
Email: shazam@erols.com

September 23, 2003

Denzil Noble, Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NW
Room 2500
Washington, DC 2002

Re: 206, 208, and 210 D Street, SE, Square 763, Lot 26,27, and 28

Dear Mr. Noble:

Please be advised that this office represents Folger Park North, LLC. I am in receipt of documents relative to the second Work Stoppage Order issued from your office in the last two months. I have deep concerns over the reasons for such an order and the fact that it appears to have been an ex post facto decision.

I have not been kept in a vacuum and am aware that you had received numerous telephone calls from two of our neighbors in particular, intent on stopping all work at the locations cited above, notwithstanding, that all building regulations, zoning restrictions and the request for needed permits has been scrupulously adhered to as verified and signed for by your office and personnel. The work stoppage last month was determined to be in error, without any foundation, and was a result of the many telephone calls from the most vociferous of the neighbors. Unfortunately, my clients were unfairly penalized as a result and lost three full days of work, which I know you are well aware is a costly process.

This latest round is particularly disturbing as there has never been a valid reason, code or regulatory violation cited as the basis for a justified work stoppage. Further, my clients have spent three days sitting in the lobby at your offices awaiting a meeting with you to discuss the situation. When you actually met with them on September 21, 2003 you did not provide any reason for the work stoppage. Finally, you had stated that you would call them with an answer by the close of business that day. Unfortunately, that has not happened nor has there been an answer to the email sent to you on the 23rd of this month. This whole affair has been costly and frustrating as well as without justification.

My clients were, and are, in strict compliance with each and every regulation necessary to secure the building permits issued by your office. Throughout the process they have been working diligently with members of your staff to insure that each document is accurate

and represents completely the work to be performed. After each review it has been determined at each step that, indeed, the rules have been complied with and the requests for permits were completely and properly filled out. It is important to note, that over the period of the last twelve months, zoning officials at DCRA have conducted ***no less than five*** reviews of this project, focused on the applicability of the zoning codes to the three proposed town-homes. Initial applications for building permits were submitted in August of 2002. The earliest written approval of this project by Zoning occurred as of September, 2002, with the latest review (the current one notwithstanding), being completed, with re-certification of Zoning approval, as of July 22, 2003. In each instance, the zoning administrator, or his/her representative, has certified that the homes are a 'matter of right' project. These reviews were not precursory or limited reviews. In more than one instance the actual permit application process was halted by Zoning for approximately two weeks, prompted by enquiries from outside parties as to the legitimacy of the lot sizes, etc. In each and every instance either my clients as owners or the architect were called in to answer questions, provide documentation, etc. in support of these reviews. IN EACH CASE, THE OFFICIALS CONDUCTING THE REVIEW WERE UNANIMOUS IN THEIR DECISION AND RULING THAT THE PROJECT BE APPROVED, AND THE PERMITS BE GRANTED AS 'MATTER OF RIGHT' CONSTRUCTION.

To briefly address the proposed appeal as has been submitted to BZA, by their own admissions on pages 8 and 9 of their letter, the appellants state that they are well beyond the time period in which to submit a proper appeal and give no justification for such actions. Based upon the actions of the appellants and their own glaring admissions, the proposed appeal, case no. 17085 cannot be lawfully accepted by the Board of Zoning Adjustment. However, my issue is more immediate and needs to be addressed by your office.

A careful review of the statutes and regulations confirms that your actions in approving all of the permits to date were ***absolutely correct and in strict compliance with existing law,*** copies of which I will gladly make available to you.

Based upon the actions of DCRA in issuing the various permits and continuing approval at each step, my clients have justifiably **relied** on those actions and have already expended in excess of one million dollars to develop this property, with another two million in obligation to their lenders. They cannot afford to sit idle and must complete the project or they will be ruined as a result of the aggregate actions described above.

This problem extends well beyond the one situation in which my clients find themselves through no fault of their own by simply relying on following the rules and regulations for such development. There are numerous developers watching this case and its final outcome. They are reluctant to go forward with new projects in the District of Columbia when they feel that after expending large sums of money in good faith based on approvals of DCRA that ex post facto the DCRA can come in and shut them down. My clients are trying very hard to do the right thing by the District of Columbia and are willing to expend their time and money in creating jobs and new tax bases for the

District. They are willing to do everything the District requires, as has already been amply demonstrated at each step of the procedure, and take their risks. If this project is **unjustly** stopped any longer, thereby causing irreparable harm to my clients, it will send a frost through the development community that will have disastrous consequences to the future economic well being of the District in lost taxes, revenue, and many jobs.

Rather than pursue an emergency action/appeal to BZA we need to schedule an immediate meeting between yourself, my clients, the general counsel, and myself to rectify the situation and lift the stop work order. My clients continue to be prejudiced by this situation, without the benefit of due process, and in spite of the fact that the appellants admit that their appeal is out of order. I will contact you to set up the meeting.

If you have any questions, please contact me immediately. Appreciating your promptness and response, I remain

Sincerely,

Selig Solomon

Cc: Folger Park North, LLC
Ms. Theresa Lewis, Deputy Director, Consumer and Regulatory Affairs
Mr. Geoffrey Griffis, Chair, Board of Zoning Adjustment
Mr. Toya Bellows, Board of Zoning Adjustment
Ms. Sharon Ambrose, Council Member, Ward 6
Mr. Joseph McCarley, Mayors Office
Hon. Randolph Cunningham, Member, DC Appropriations Subcommittee
Mr. Fred L. Greene, former Dir. Off. Planning, Board Zoning Adjustment, Zoning Administrator