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May 18, 2004

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By Hand

Mr. Geoffrey Griffis
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W., Room 210
Washington, D.C. 20001

Re: BZA Case No. 17085 – Appeal of Larry & Louise Smith and Mary Ann Snow and James Marsh 210 D Street, S.E.; Square 763, Lot 26, 27 and 28 (the "Properties")

Dear Chairperson Griffis and Fellow Board Members:

On May 6, 2004, counsel for the Neighbors in this case (appealing the issuance of building permits by DCRA to Folger Park North, LLC for the Properties) filed a letter indicating that Folger Park needed a side yard variance for Lots 26 and 28 (two end units). Accordingly, the Neighbors' counsel argues that for this reason and those listed in their prior correspondence to the Board, the Neighbors Appeal should be granted. Counsel for Folger Park notes that the Neighbors appear to be abandoning prior arguments in this Appeal given the granting of lot area and width variances in Case No. 17108 and submit the following:

1. (A) No Service on the Parties

The May 6, 2004 letter was never served on counsel for Folger Park as required by Section 3111 of the Board's rules. A cursory review by counsel of the Board's file on May 17, 2004 prior to the appeal hearing on May 18, 2004 was the first indication that such a letter had been filed. A call to the Office of Planning (Joel Lawson) also indicates that the Office of Planning did not receive a copy as indicated on the letter filed by counsel for the Neighbors. ANC 6B representatives could not be reached to ascertain if it had been served. DCRA was not served.

BZA
Case No. 17085
Exhibit No. 49

Board of Zoning Adjustment
District of Columbia
CASE NO. 17085
EXHIBIT NO. 49

(B) Failure to Meet 14 Day Filing Deadline

Under Section 3112.10 of the Board's rules, the Neighbors must file any additional statements with the Board at least 14 days prior to the hearing. The new issue was raised on May 6, 2004, which is 12 days prior to the hearing.

(C) Failure to Meet 10 Day Under Roof Deadline

Under Section 3112.2 (b) of the Board's rules, the latest an appeal can be filed is within 10 days of the property being under roof. The subject property was under roof prior to the Board's decision on April 6, 2004 in Case No. 17108.

For all these reasons, the May 6, 2004 letter by the Neighbors' should be dismissed.

2. The letter raises a new issue – alleged lack of a side yard variance – well beyond the 60 day time period from the issuance of the permits allowed by the Board's rules for appeals, and is therefore subject to dismissal.

The cases cited by the Neighbors were decided in 2001 and 2002. The Neighbors had Folger Park's plans in hand in February of 2003, indicating no side yard. DCRA issued building permits in the summer of 2003. The Neighbors' objection is raised in May of 2004, beyond all reasonable time limits.

3. For the same reasons that the Board granted a lot size and lot width variance in Case No. 17108, that is, multiple approvals by DCRA over a 13 month period with full public disclosure of the plans for the project disclosed to the Neighbors as early as February of 2003, a variance would be granted for a side yard variance, if needed. This is especially true since the intent of the side yard variance is to provide "light and air" as indicated in the Neighbor's May 6, 2004 letter at 2. There is an open alley to the right of the Properties (facing the Properties with the park at one's back) and 30 feet of space separating the last flat on the left from the Neighbors' properties. Accordingly, the intent of the side yard variance if required, which we do not concede, is fulfilled for this project.

For all these reasons, the latest issue raised by the Neighbors should be heard as a preliminary matter by the Board and dismissed.

Sincerely,

Richard L. Aguglia

Richard L. Aguglia
RLA/csg

cc: By Fax

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Jeannine Rustad, Esq.
Counsel for the Neighbors

Office of Planning
c/o Joel Lawson

ANC 6B
c/o Julie Olson

By E-Mail

Folger Park North LLC
c/o Chris Doerfler