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June 2, 2004

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

Re: BZA Appeal No. 17085, 206, 208 & 210 D Street, S.E.
Our File No. 092314.00000

Dear Mr. Griffis:

Per the Board's request at the close of the March 18, 2004 hearing, enclosed you will find the original and twenty (20) copies of the Neighbors' statement regarding the Board's jurisdiction over their May 6, 2004 supplemental prehearing statement in the instant appeal.

Thank you for your attention to this matter.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler
Jeannine Rustad

Enclosures (as stated)
cc: Mary Ann Snow & James Marsh
Larry & Louise Smith
Capitol Hill Restoration Society, c/o Gary Petersen
Office of Planning, c/o Joel Lawson
ANC 6B c/o David Sheldon (119 Duddington Place SE, Washington, DC 20003)
Richard Aguglia, Esquire
Lisa Bell, Esquire
(All by hand and with enclosure)

Word 45651543.1

BZA
Case No. 17085
Exhibit No. 52

Board of Zoning Adjustment
District of Columbia
CASE NO. 17085
EXHIBIT NO. 52

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal of Larry & Louise Smith and
Mary Ann Snow and James Marsh — BZA Appeal No. 17085

STATEMENT OF MARY ANN SNOW, JAMES MARSH AND LARRY & LOUISE SMITH

In response to the Board's request for additional briefing on their ability to supplement their appeal of the building permits in this appeal, appellants Mary Ann Snow, James Marsh and Larry & Louise Smith (the "Neighbors") submit the following.

SUMMARY OF ARGUMENT

In this matter, the Neighbors have appealed the building permits issued to the owner of the subject property. They have also amended the issues raised in the appeal to include another infirmity related to the building permit issued to the property owner, which was later subject to a stop work order issued by the Department of Consumer & Regulatory Affairs. There is no impediment to the Neighbors raising all zoning issues, including ones discovered prior to the date of the hearing in this case, for review by this Board, as it relates to the building permits issues, as long as the appeal initially filed was timely. That is because, in administrative matters such as appeals before the Board of Zoning Adjustment (the "Board"), which do not require pleading with specificity, the appeals are to be liberally construed and easily amended so as to make the pleadings more definite and certain. Indeed, as discussed below, had the Neighbors sought injunctive relief pursuant to D.C. Code § 6-641.09, which permits challenges to the construction initiated by the property owners in Superior Court, amendment of the pleadings to include the side yard issue would have been granted freely. Generally, there is greater flexibility in the amending of administrative pleadings than court pleadings, so long as the opposing party is not prejudiced in presenting his case.

Given the flexibility in the amending of administrative pleadings and the opportunity for Folger Park North, L.L.C. ("Folger") to present its case on the side yard issue in a hearing on the merits, the supplemental issue raised by the Neighbors should be considered by the Board. Issues remaining for a hearing on the merits are the appropriateness of the grant of the building permit and the lifting of the stop work order in light of the need for relief from the side-yard requirements.

FACTS

Time Line of Relevant Facts to Side-Yard Issue:

August 25, 2003:	Building permits issued for construction of row-houses at 206 – 210 D Street, N.W.
September 12, 2003:	Neighbor's File Appeal of, *inter alia*, all building permits
September 16, 2003:	DCRA issues stop work order on basis that lots do not meet area and width requirements of zoning regulations. The construction consists solely of foundation and foundation walls.
September 25, 2003	Counsel for Neighbors receives letter from Mr. Noble (dated September 16, 2003) that stop-work has been imposed.
October 1, 2003	Construction resumes.
October 1-3, 2003	Counsel for Neighbors attempts to reach Denzil Noble at DCRA to discuss (and/or meet) whether (and) why the stop work order was lifted. No response received.
October 6, 2003	The following response is received from DCRA:

> Ms. Zigner
>
> This is matter is pending an appeal before the BZA in which you represent the appellant. The appellant appealed my decision to issue the building permits. The General Counsel has advised me that any matters pending before BZA or any courts in the District of Columbia, the parties must contact the Office of the General Counsel for a meetings relating to the case. The General Counsel can be reached at (202) 442-8475.
>
> Denzil L. Noble
> Administrator
> 941 North Capitol Street, N.E. - Suite 2000
> Washington, D.C. 20002
> (202) 442-4542

October 6 – end Oct. 2003	Attempts made by counsel for Neighbors to contact DCRA Counsel to set up meeting between parties and to ascertain why stop work order was lifted.

October 23, 2003	Office of Planning ("OP") recommends expedited hearing. Reason for expedited hearing "due to the quick onset of winter and potential for adverse weather effects on the partial construction, the applicant and DCRA are anxious to resolve the issue." (This, despite construction ongoing)
October 31, 2003	Appeal supplemented to include the lifting of the stop work order, referenced in Mr. Noble's letter dated September 16, 2003, which was received by Robins, Kaplan, Miller & Ciresi on September 25, 2003.
November 4, 2003	Meeting with Office of Planning. Informed that developer granted DCRA an indemnity in exchange of being allowed to proceed with construction. It was believed that deadline for filing an application by the property owner had passed.
January 13, 2004	Neighbors file a motion to appear as a party in BZA Application No. 17108 ("Application") and motion to consolidate Appeal and Application.
January 27, 2004	Application scheduled for hearing; continued at Folger's request. BZA denies motion to consolidate but agrees to hear both cases on same day, time permitting. Hearing on Application scheduled for afternoon February 24, 2004.
February 10, 2004	Folger files statement in Appeal and Application. Neighbors file opposition to dismiss appeal and prehearing statement in Appeal.
February 17, 2004	OP files report, which includes discussion about side yard issue.
February 23, 2004	In response to OP report, Neighbors file a supplemental statement in the Application to include side yard issue.
February 24, 2004	Hearing in the Application. Statement by Chairman Griffis as to side yards: > . . . It is an issue obviously that will come up in this, and obviously when we review it and deliberate on it. Tr. at p. ____ (*see* attached).

Early March, 2004	Notice sent re: hearing on Appeal scheduled for May 18, 2004.[1]
April 6, 2004	Board deliberates on application. Does not reach side yard issue but, rather, says that when permits applied for, DCRA will refer matter for variance.

ARGUMENT

In administrative matters, there is great leeway in the ability to amend pleadings so as to make the pleadings more definite and certain or to allow the pleadings to conform to the proof. 2 AM Jur 2d, *Administrative Law* § 292. Courts have consistently held that "administrative pleadings are 'liberally construed' and 'easily amended.'" *Mineral Industries & Heavy Construction Group v. OSHA*, 639 F.2d 1289, 1292 (4th Cir. 1981)(allowing an amendment of pleadings alleging a violation on a date certain to be amended to allege violations on or before that date certain, thus letting in evidence of previous violations); *Yaffe Iron and Metal Company, Inc. v. EPA*, 774 F.2d 1008 (10th Cir. 1985)(allowing amendment of pleadings to include earlier incidents); *Usery v. Marquette Cement Mfg. Co.*, 568 F.2d 902, 906 (2nd Cir. 1977)(allowing amendment of pleadings changing legal theory on which charges were brought); *see also Raven Services Corp. v. NLRB*, 315 F.3d 499, 503 (5th Cir. 2002), *r'hrg denied* 2003 U.S. App. LEXIS 4540 (5th Cir. Feb. 11, 2003)(complaint in an administrative pleading is not to be judged by judged by rigid pleading rules; allowed amendment of complaint to add a new charge during closing arguments where issue had been fully and fairly litigated); *New York State Electric & Gas CORP. v. OSHA*, 88 F.3d 98, 105 (2nd Cir. 1996) *citing* 1 Kenneth C. Davis, Administrative Law Treatise § 8.04, at 523 (1st ed. 1958) (administrative pleadings are unimportant). To be certain, it has been commented that "the most important characteristic of pleadings in the administrative process is their unimportance." *Usery*, 568 F.2d at 906 *citing* 1 Davis, Administrative Law Treatise § 8.04, at 523.

1. Rules of Procedure Before the Board of Zoning Adjustment do not Require Pleadings to Provide Great Detail.

Section 3109 of the zoning regulations provides that the Office of Zoning, with approval by the Board, may adopt forms to ensure that adequate information is provided. The appeal form, as adopted by the Board, merely requires that an appellant state the decision appealed from and what the effect of that decision was. Thus, in the instant matter, it would have been sufficient to merely appeal the issuance of the building permits in violation of the zoning regulations. Recognizing that limited information is required with the filing of an appeal, section 3112.10 of the zoning regulations requires that:

> No later than fourteen (14) days before the date of the hearing for the appeal, the appellant shall file with the Board any additional statements, information, briefs, reports (including reports or statements of expert and other witnesses), plans, or other materials

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[1] Published in the March 19, 2004 D.C. REGISTER.

> that the appellant may wish to offer into evidence at the hearing. Any map, plan, or other document or matter readily available to the general public need only be fully referenced and the source given by the appellant in place of filing a copy.

As indicated above, the Neighbors filed their prehearing statement in the instant appeal on February 10, 2004. On May 6, 2003, the Neighbors, realizing that they had only filed a statement on the side yard issue in the Application, supplemented their prehearing statement in the instant matter to incorporate their briefing on the side yard issued filed in the Application case three months earlier. As a supplemental statement, there was no requirement that the statement be filed fourteen (14) days in advance of the hearing.[2]

As to whether the supplement was timely filed in relation to the statute of limitations, as the side yard issue arises out of the same set of circumstances and facts -- or rather, from the building permits appealed from, as well as the lifting of the stop work order – the supplement relates back to the original filing, which was well within the period of limitations. *See Simplex Time Recorder Co. v. Sec. of Labor*, 766 F.2d 575, 585 (D.D.C. 1985)(as amendment arose under same transaction or occurrence as original citation in administrative matter, the amendment related back to the date of the original pleading and was, therefore, timely).

That one need not plead with specificity in matters before the Board is illustrated by the facts in BZA Appeal No. 16934 of Advisory Neighborhood Commission 6A ("ANC 6A") (August 1, 2003), which involved an appeal of the issuance of a foundation permit. As illustrated in the following discussion of that matter, what that case turned on was not the timeliness of any amendment to the pleadings, but the fact that ANC 6A had appealed from the wrong permit. Aware of this error, the Board gave the ANC ample opportunity to amend its pleadings over an extended period of time. The matter was dismissed only when the ANC failed to amend its appeal to include the correct permit. The facts, as presented in the order for that matter, are as follows:

On July 11, 2002, ANC 6A voted to file the appeal of the foundation permit for the property in Appeal No. 16934, which appeal was filed on July 24, 2002. A construction permit for the property was issued on July 12, 2002. The hearing in the appeal was set for hearing for November 19, 2002. On July 25, 2002, the Office of Zoning requested from ANC 6A additional information about its appeal, to which ANC 6A responded on September 4, 2003. However, the response did not amend the appeal to include a challenge of the issuance of the July 12, 2002 building permit. On the November 19, 2002 hearing date, ANC 6A requested, and was granted, a continuance. The hearing was rescheduled for February 18, 2003. In granting the continuance, the Board urged the ANC to include a challenge to the building permit in the appeal, indicating to the ANC that the ANC had appealed the "wrong" permit. The deadline for the ANC's further submissions was January 21, 2003, with response of the property owner due on February 3, 2003.

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[2] In the Application, the Neighbors, without objection from Folger, filed their supplemental statement the day before the hearing.

On February 3, 2003, the property owner filed a motion to dismiss on the basis that, *inter alia*, the appeal was insufficient because the ANC appealed from the foundation and not the building permit. The ANC did not respond in writing to the motion to dismiss. At the hearing (postponed until March 4, 2003, due to inclement weather), the Board denied the motion to dismiss and directed the owner to submit documentation regarding its foundation permit application. At the March 4 hearing, the ANC, again, failed to amend its appeal. It was not until the March 18, 2003 hearing that the ANC framed the issue on appeal as to whether the new construction violated the side yard requirements.

The Board, in dismissing the appeal, noted that the ANC had numerous opportunities to amend its application to include in its appeal the correct permit. Additionally, the ANC had been urged by the Board to amend its appeal. Specifically, the ANC could have amended its appeal: (1) in response to the Office of Zoning request for additional information on July 25, 2002; (2) at the November 19, 2002 hearing; (3) by the January 21, 2003 deadline for ANC submissions; (4) after receiving the property owner's motion to dismiss on February 3, 2003; and (5) at the March 4, 2003) hearing. Given the ample opportunity and notification of the need to amend the appeal so as to include the proper permit, along with the ANC's failure to do so, the Board dismissed the appeal. Of importance in that matter was that the ANC had only appealed a foundation permit, not a construction permit. As a foundation did not constitute a "structure", there was no side-yard requirement for the foundation. Having failed to appeal the issuance of the building permit, there was no basis for the appeal.

Thus, BZA Appeal No. 16934 does not bolster Folger's argument that the amendment sought in the instant matter is untimely. That case involved the appeal of an incorrect permit and failure to correct the deficiency. In contrast to ANC 6A, the Neighbors not only timely appealed the correct permits – *ie.*, the building permits – it timely appealed the lifting of the stop work order. Thus, this matter should be allowed to proceed both on the issuance of the permits as related to the issue of the side yard requirements, as well as to the lifting of the stop work order by DCRA. Clearly, the side yard issue would be relevant to the appropriateness of DCRA allowing construction to proceed without requiring either compliance with the side yard requirements or application by Folger for a variance from the side yard requirements.

2. Folger Had Timely Notice of the Side Yard Issue.

   a. The Neighbor's May 6, 2004 Filing Does Not Deny Folger the Opportunity to Present its Case Regarding the Side Yard Issue.

In reviewing whether or not an amendment of an administrative appeal should be permitted, what is at issue is not prejudice to the opposing party in general. *Usery*, 568 F.2d at 907; *Albemarle Corp. v. Herman*, 221 F.3d 782, 786 (5th Cir. 2000); *Simplex Time Recorder Co. v. Sec. of Labor*, 766 F.2d 575, 585 (D.D.C. 1985). Rather, prejudice is to be viewed as to whether the opposing party will be denied the opportunity in presenting his case. *Id.* Clearly, as a hearing on the appeal has yet to be held, Folger has not been denied such an opportunity.

b. There is No Other Prejudice to Folger, Other than that of its Own Creation.

Even if the Board were to consider any other prejudice to Folger outside its ability to present its case,[3] the timing of the Neighbors' filing of their supplemental statement cannot be viewed in the abstract. Rather, the Board must look to the totality of the facts and circumstances surrounding the side-yard issue, as well as Folger's conduct in general.

As illustrated in the above-time line, the Office of Planning included in its report in the Application its belief that a variance from the side-yard was needed. This report was filed on February 17, 2004. On February 23, 2004, the Neighbors supplemented their pleadings in the Application to include a basis for denial of the requested variances the need for side yard variances. At the February 24, 2004 hearing, counsel for the Neighbors questioned Folger along these lines and, as cited above, the Chairman of the Board recognized that compliance with the side-yards was at issue and stated that the Board would take that issue up in its deliberations. Much to the surprise of the Neighbors, the only "deliberation" on the side yard issue by the Board was to state that, when permits were applied for after the granting of the variances from the lot width and area requirements, presumably, the Department of Consumer and Regulatory Affairs ("DCRA") would refer the matter back to the Board for variances from the side yard requirements. Based on this assumption, the Board did not see the need to take up the side yard issue in the Application. Unfortunately, this determination ignored the fact that the permits were issued and, although a stop-work order had been imposed, Folger chose to proceed with construction.

c. Folger's Decision to Proceed with Construction at It's Own Risk Should Not Deter Enforcement of the Zoning Regulations.

At the hearing in the Application, Folger represented that it had been permitted by DCRA to proceed with construction while its Application was on-going in exchange for an indemnification agreement with the District. Upon information and belief and directly contrary to Folger's testimony in the Application, the Neighbors have now discovered that there is no indemnity agreement which allowed Folger to proceed with construction. Although Folger did provide a purported indemnification to the District, such indemnification was not satisfactory to the District and, as such, was never executed by the District. Without execution by both parties and without the purported indemnification being satisfactory to the District, there can be no

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[3] Presumably, Folger will allege that it has been prejudiced, as it has proceeded with construction, which is near completion. However, the Board must keep in mind that Folger proceeded with construction *at its own risk.* Furthermore, as indicated above, any prejudice outside that of the ability to present one's case, is irrelevant to a determination of whether an amendment of pleading (or supplement, as the case may be) should be permitted in an administrative matter.

"agreement."[4]

It has been the Neighbors' consistent position throughout both the Application and the instant Appeal that Folger has made every effort to circumvent compliance with the zoning and building regulations and has acted in bad faith in doing so, resorting to misstatements and misleading government officials. Folger's testimony that it had an "indemnification agreement" with the District not only serves to further illustrate this point, but further calls into question much of its testimony in the Application with regard to statements it alleges the District made.

The Board may question how this information affects its decision in the instant matter. Quite simply, the Board, having also been victim to Folger's web of deception, is the only entity that can now right this wrong.[5] The Board is now faced with two (2) alternatives: (1) faced with new information (ie, that Folger's testimony in the Application is, at best, questionable), it can reopen the Application and solicit testimony from DCRA; or (2) given, as stated above, that Folger had knowledge of the side yard issue as early as February 17, 2004, the Board can allow

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[4] An agreement is defined by Black's Law Dictionary as:

> A meeting of two or more minds; a coming together in opinion or determination; the coming together in accord of two minds on a given proposition. In law, a concord of understanding and intention between two or more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or performances. The consent of two or more persons concurring respecting the transmission of some property, right, or benefits, with the view of contracting an obligation, a mutual obligation.
>
> A manifestation of mutual assent on the part of two or more persons as to the substance of a contract.
>
> The act of two or more persons, who united in expressing a mutual and common purpose, with the view of altering their rights and obligations. The union of two or more minds in a thing done or to be done; a mutual assent to do a thing. A compact between parties who are thereby subjected to the obligation or to whom the contemplated right is thereby secured.
>
> Although often used as synonymous with "contract", agreement is a broader term; *e.g.* an agreement might lack an essential element of a contract. The bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.
>
> The writing or instrument which is evidence of an agreement.

BLACK'S LAW DICTIONARY 67 (6th ed. 1990)(citations omitted).

[5] Despite the documentation supported in support of the Neighbors' position that Folger had not been forth-coming in its permitting process, during Board deliberations on the matter, Board member Ruthanne Miller commented that she found no evidence of misconduct on the part of Folger. Clearly, had an official of DCRA been called as a witness to that matter, the misstatements and misconduct of Folger would have been brought to light. However, lacking subpoena power, the Neighbors could not compel a witness of DCRA to appear at the hearing. However, given that there is no final decision in the Application, the Board can reopen that matter for the limited purpose of allowing testimony of DCRA.

this appeal an the side-yard issue and/or allow the Application to be reopened to hear testimony on the side-yard issue.

Had matters proceeded in an orderly fashion, upon the issuance of the stop-work order on September 16, 2003, Folger would have been sent to the Board to obtain the necessary variances *prior* to being permitted to proceed with construction. Thus, once it had been determined that additional variances were necessary, DCRA could have referred Folger to the Board for the additional variances either upon notice of the additional necessary relief (*ie,* so that Folger could have amended its application) or at such time as a final order was issued and Folger sought to have the stop work order lifted. However, given that Folger has proceeded with construction, DCRA has no power to enforce the side yard issue.

Ignoring the clear facts of this case would only reward Folger for its gross misrepresentations and contortion of the facts to both this Board and, as it now should be evident, to DCRA. Dismissing the appeal would be to turn a blind eye and open the door for other developers or, more relevantly, this developer [site article for other Folger development] to resort to the same tactics to achieve their ends at the expense of the community and, in the long run, the District as a whole. Folger's conduct has done nothing more than make a farce out of the zoning and building regulations, and a mockery of the processes put into place for the enforcement of the same – namely the application and appeals process to this Board.

3. D.C. Code Section 6-641.09.

Section 6-641.09 of the D.C. Code provides a mechanism whereby an adjoining property owner may institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation or to prevent the occupancy of such building, structure, or land. Thus, adjacent property owners like the Neighbors are authorized to act as private attorney generals to ensure compliance with the building and zoning regulations by bringing complaints in Superior Court challenging illegal construction like the subject property owners' construction. *See President & Directors of Georgetown University v. Diavatis*, 470 A.2d 1248 (D.C. App. 1983). And, D.C. SCR-Civil Rule 15(a) allows for amendments to be "freely given where justice so requires." *See also* D.C. SCR-Civil Rule 15(b)(allowing an amendment of the pleadings to conform to the evidence to be freely granted).[6] As for the timeliness of an amendment, an amendment of a pleading relates back to the date of the original pleading when the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. D.C. SCR-Civil Rule 15(c)(2). Rule 15 is intended to

[6] Fed. Rule 15 has been cited by many federal courts as justification for allowing amendments of pleadings in administrative matters. *See Usery*, 568 F.2d 902; *Mineral Industries*, 639 F.2d 1289. However, in these cases, it was more important that administrative proceedings provide for greater flexibility in pleadings. *See Mineral Industries*, 639 F.2d at 1292.

> [r]e-emphasize and assist in attaining the objective of the rules on pleadings: that pleadings are not an end in themselves, but are only a means to the proper presentation of a case; that at all times they are to assist, not deter, the disposition of litigation on the merits.

Usery, 568 F.2d at 906.

Thus, had the Neighbors brought suit to enforce the zoning and building regulations under section 6-641.09, leave to amend any pleadings in such action to include as the basis for relief would have been freely granted by the court either prior to any hearing on the matter or, if evidence of the side yard issue were introduced at the hearing, upon the introduction of such evidence. It is axiomatic that an amendment to include the side yard issue should not be more difficult to obtain in the instant administrative proceeding, where the requirements for pleadings are less stringent and the formality of proceedings more relaxed.

Whether an amendment to an administrative proceeding is allowed by analogy to Rule 15 or because of the tenent that pleadings in administrative matters are to be liberally construed, any amendment must comply with principles of timely notice. *Compare Yaffe*, 774 F.2d at 1013 (respondent to administrative matter argued, without success, that a post-hearing amendment violated timely notice requirement; in upholding the amendment, the court noted that the respondent had opportunity to oppose the amendment through briefs it submitted to the administrative law judge) *with NLRB v. Kanmak Mills, Inc.* 200 F.2d 542 (claim amendment after hearing overturned where the respondent had not been given notice of the amended charge and opportunity to defend). Clearly, what is important is that a respondent have the opportunity to defend itself. As noted above, the instant amendment (or, rather, supplement) of the appeal does not violate any principles of timely notification, as Folger had actual notice of the side yard issue as early as February 17, 2004 and has ample opportunity to defend itself in the hearing on the matter.[7]

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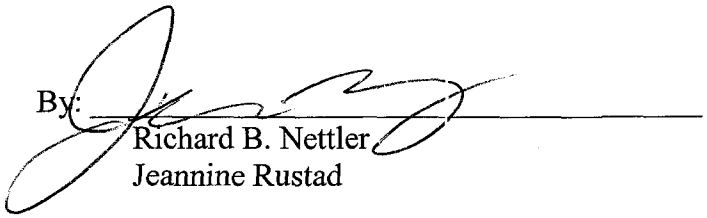
[7] Again, as to any prejudice due to the fact that Folger has proceeded with construction at its own risk, the Board cannot be concerned with such risks but, rather, must concern itself with seeing to the proper enforcement of the zoning regulations.

CONCLUSION

For the reasons stated herein and for the reasons provided set forth in its previous pleadings, the Neighbors respectfully request that the appeal be granted.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI, LLP



By: _____
Richard B. Nettler
Jeannine Rustad

cc: Mary Ann Snow & James Marsh
Larry & Louise Smith
Capitol Hill Restoration Society, c/o Gary Petersen
Office of Planning, c/o Joel Lawson
ANC 6B c/o David Sheldon (119 Duddington Place SE, Washington, DC 20003)
Richard Aguglia, Esquire
Lisa Bell, Esquire
(All by hand and with enclosure)

part of their approvals, and we're establishing that the approvals were based on information they gave them.

CHAIRPERSON GRIFFIS: Understood. Did they give them plats?

I tend to agree with the objection. I mean, there wasn't any testimony based on the side yard. It is an issue obviously that will come up in this, and obviously when we review it and deliberate on it. Going to the fact of Mr. Bellow's conversation of what would be required in terms of matter of right use and area, you asked him directly whether he brought up side yards, and he said no. So I'm not sure how much further we need to go with this.

MS. RUSTAD: Well, if we can -- yeah.

Concerning matter of right, in your application, if I can have a minute to find the section, you have argued that -- 800 and 802 were the exterior lots, correct? Mr. Stoneburner?

MR. STONEBURNER: Yes?

MS. RUSTAD: Eight hundred and 802 are the exterior lots.

MR. STONEBURNER: Eight hundred and -- yes, they are.

MS. RUSTAD: And it has been your argument