BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

APPEAL OF PAUL A. BASKEN AND)
JOSHUA S. MEYER OF THE ISSUANCE)
OF B-465646, B-468513 AND CO-9912) Appeal No. 17411
)
1636 IRVING STREET NW)

RESPONSE TO MOTION TO DISMISS

The appellants Paul A. Basken and Joshua S. Meyer (appellants) ask the Board to deny the Motion to Dismiss filed by 1636 Irving Street LLC (developers) and the Madera Condominium Association Inc. because the facts demonstrate the appeal was timely filed. Moreover, the public interest requires that this appeal be heard.

UNDISPUTED FACTS

The appellants are neighbors to what once was typical three-story Mount Pleasant row house at 1636 Irving Street NW. The developers, Robb M. LaKritz and Joshua Adler, operate under a series of corporate identities, including 1636 Irving Street LLC, Gallatin Construction LLC and Gallatin Capital Partners. Prior to the purchase of the property by the developers, 1636 Irving Street NW was single-family row house with three apartment units. This R-4 row house is now a seven-unit monstrosity with a new addition taking up more than 60 percent of a lot that measures nearly 3,000 square feet. The newly constructed addition towers over the two adjacent homes of the appellants at 1638 and 1640 Irving Street NW.

On December 17, 2004, the Department of Consumer and Regulatory Affairs issued Permit B-468513 as a revision to B-465646. The first building permit allowed for a three-story addition and interior remodel to 1636 Irving Street NW. The second permit was issued with the following language:

"ADDITION OF ONE KITCHEN ON FIRST, SECOND, & THIRD FLOORS CONVERTING 3 UNITS APT. INTO 7 UNITS. REVISION OF INTERIOR FOR PREVIOUSLY APPROVED ADDITION. **SUBJECT TO ZONING APPROVAL OF NUMBER OF UNITS IN ZONE.**" (emphasis added).

No other building permits were obtained by the developer. No notice was ever provided to neighbors that additional zoning approval was being sought. In fact, the developer never sought approval from the Zoning Department or the Board of Zoning Adjustment (BZA) for the increase in units. The developer apparently ignored the express language in the permit requiring further zoning approval.

Board of Zoning Adjustment
District of Columbia
CASE NO. 17411
EXHIBIT NO. 17

#17

THE APPEAL WAS FILED WITHIN THE 60 DAYS OF ISSUANCE OF THE CERTIFICATE OF OCCUPANCY AND IS THEREFORE TIMELY FILED

Under 11 DCMR $3112.2, an appeal regarding the administration or enforcement of the zoning regulations may be filed by "Any person aggrieved by any order, requirement, decision, determination, or refusal made by an administrative officer or body . . . in the administration or enforcement of the Zoning Regulations." The regulation further requires that an appeal must be filed "within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier." 11 DCMR $3112.2(a)(as amended).

The motion to dismiss filed by the developers is based almost solely on the specious argument that the clock for filing the appeal started not when the certificate of occupancy was issued but 15 days earlier when DCRA Director Patrick J. Canavan issued a letter to the Advisory Neighborhood Commission (ANC) for Mount Pleasant, dated May 26, 2005. The developers maintain that because appellants became aware of this letter on May 27, they had sufficient notice that a certificate of occupancy would be issued.

This argument, however, attempts to parse Section 3112.2 too thin and should not be accepted by this Board.

Director Canavan's letter was not the definitive act that started the time for appeal. A full reading of Mr. Canavan's letter makes clear that Mr. Canavan did not make a blanket commitment on future action. Mr. Canavan also did not rule out blocking the certificate of occupancy on all possible grounds raised by the appellants.

These are not insignificant points. As of the May 26 letter, the DCRA was under pressure from abutters and city leaders and all parties remained unclear after the letter on what DCRA would do in this case.

The appellants had repeatedly questioned the developer about the legality of the addition at 1636 Irving Street NW, the legality of the number of units and other potential violations, and were told by the developer that it fully complied with all zoning regulations. The appellants also made repeated complaints to the DCRA about the size and scope of the project during the initial construction phase but DCRA did not take any action against the developers.

Finally, after repeated complaints to Council Member Jim Graham's office by neighbors and prodding by the ANC, Mr. Canavan issued the May 26 letter. This letter, addressed to the ANC, acknowledged that errors were made in the review and issuance of the building permits. Mr. Canavan further stated that despite the "gross mistakes" made in issuing the permit, "[t]he Zoning Administrator will not deny the property owners a Certificate of Occupancy for the property **on the basis of the zoning review error**. ANC 1D, of course, has the right to appeal this decision to the Board of Zoning Adjustments (BZA)."

The Canavan letter did not address any of the other potential violations raised by the appellants in their repeated emails and telephone calls to DCRA. The reference by Mr. Canavan to the "zoning administrator" in his May 26 letter is also significant. The zoning administrator had been Toye Bello. Mr. Bello was removed from his position in part because of his handling of this case, according to officials including Council Member Graham. Mr. Canavan therefore left wide open the question of whether he accepted his judgment and whether the zoning administrator would have the final word on behalf of the DCRA.

On June 10, 2005 the DCRA went forward and issued a certificate of occupancy for 1636 Irving Street NW.

In a letter dated July 13, 2005, Director Canavan sent a letter to Council Member Graham, who represents Mount Pleasant and also heads the committee overseeing the DCRA. This letter reiterated that the decision to permit seven units was in error. The letter also acknowledged for the first time that "other calculations as to lot occupancy were in error." The letter also addressed specific questions provided by the appellant, and included the following question and answer:

"4. Does the building as it now stands at 1636 Irving comply with all other zoning requirements. Does it match the blueprints submitted with the permit applications? In particular, does the building, including its balconies, exceed the 60 percent lot coverage limit? Does it setback on the east side violate a six-foot set back rule? Are the windows on the property on the west side legal? Is there any kind of relevant restrictions restriction to the effect that the residential portion of an apartment building cannot cover more than 40 percent of the lot? What are your numerical calculations of lot size and building size?

Response:

The Department is retrieving the building plans to respond to these particular questions and will respond no later than Friday, July 15, 2005."

Neither Council Member Graham nor the appellant ever received the promised response. Moreover, despite repeated attempts by the appellant, DCRA still has not produced a copy of the approved plans.

On August 5, 2005, the appellants filed their appeal. The appeal was filed 55 days after the DCRA issued its certificate of occupancy and prior to receiving a decision from the DCRA on other possible zoning and building violations.

Given the uncertainty surrounding Mr. Canavan's May 26 letter, the logical and equitable starting point for an appeal is when the certificate of occupancy was in fact granted. It was only at this point that the appellants were certain that none of the issues raised would preclude DCRA from issuing a certificate of occupancy.

It is also pertinent that the Canavan letter of May 26 is addressed to the ANC and states that the "ANC 1D, of course, has the right to appeal this decision to the Board of Zoning Adjustments (BZA)." The letter did not expressly suggest

that right to other interested parties. It is only when the DCRA's intent was crystallized by the issuance of the certificate of occupancy that an appealable decision was affirmatively identified.

Mr. Canavan also stated in the letter that he "will not penalize those who relied upon the flawed decisions of the regulatory agency charged with approving the work." Yet Mr. Canavan offered no details of what "flawed decisions" he was referring to, or who made them. He also offered no details of what analysis, if any, he has made of the potential costs of bringing 1636 Irving Street NW into compliance with city regulations.

In fact, none of the units have been sold, and one of the least onerous fates the developers could face as a result of this process would be to scale their development back to the three-unit maximum that is allowed under law. Already the developers have torn apart the basement unit, due to water damage, completely removing the kitchen area. This de-facto elimination of one of the units has proven to be a rather minor change in comparison to the overall construction job at 1636 Irving Street NW, and it makes clear the developers would have little room to complain about an unfair imposition if they were ordered to take the same action with three more of the units. Yet Mr. Canavan simply states that he could conceive of no possible response to any possible violation, without describing any of what he is referring to.

In particular, Mr. Canavan and DCRA to this date have still not explained the meaning behind the wording on the December 17, 2004, permit and when it expected of the developers to comply with the very clear condition: "SUBJECT TO ZONING APPROVAL OF NUMBER OF UNITS IN ZONE." The developers have yet to explain how that language could be read to exclude the need for very approval it requires.

THIS APPEAL SHOULD BE PERMITTED TO PROCEED REGARDLESS OF WHICH ACTION STARTED THE APPEAL DEADLINE BECAUSE EXCEPTIONAL CIRCUMSTANCES ARE PRESENT AND THE DEVELOPERS WILL NOT BE PREJUDICED

Even if the board should find the letter and not the certificate of occupancy was the appealable decision, exceptional circumstances are present that warrant an extension of time to file by 10 days.

Under 11 DCMR $3112.2, the 60-day timeframe for an appeal may be extended 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..." 11 DCMR $3112.2(d)

There are exceptional circumstances in this case which caused the appellant's to time their appeal based on the issuance of the certificate of occupancy and not the DCRA director's letter. The circumstances include the fact

that the defendant's highly experienced real estate attorney declared in communications to the appellants that the filing deadline for the BZA appeal was August 10, 2005 – 60 days after issuance of the certificate of occupancy. This filing deadline -- based on the date of the certificate of occupancy -- was also confirmed by the BZA staff on several occasions.

Prior to the submission of their appeal to the Board on August 5, the abutters involved in this case granted a request by the developers to engage in negotiations aimed at reaching an agreement to modify the structure and provide compensation for losses and damages.

Mr. LaKritz offered terms of a settlement. After a period of negotiation, Mr. Basken wrote an email communication dated June 8 setting out terms. Mr. LaKritz wrote back the same day calling those terms "reasonable" and declaring his intention to have his attorney, Mr. Fredric Press, draft formal language to codify that agreement. The negotiations later broke down when Mr. LaKritz and his team reneged on a series of those commitments, including his agreement to pay attorney costs and to either remove or erect a covering over the rear balcony, and added fundamentally new conditions, including a right to permanent access to the rear yard of 1638 Irving Street NW and a permanent waiver by the abutters of any future legal claims for any actions whatsoever.

Mr. Press sent an email communication to the appellants on July 22, 2005, in which he pleaded for those negotiations to continue, saying: "First of all, you have until August 10 to file an appeal" with the BZA. This email communication by Mr. Press, was copied repeatedly in subsequent communications between the appellants and the legal team representing the developers, including Mr. Paul Kiernan and Mr. Christopher Collins, lawyers who are the author of the motion now before the Board.

Mr. Basken stated in an email communication to the developers and their lawyers that he recognized the significance of Mr. Press's statement concerning the August 10 date, and he received no response from Mr. Press, Mr. Kiernan, Mr. Collins or anyone else representing the developers, or the developers themselves, describing that comment as an error.

Mr. Press then arranged another negotiation session for July 27, the date the developers are now telling the Board was the outside limit of the 60-day filing period. Mr. Press canceled that session only hours before it was to begin, providing in an email the explanation that there were "Too many participants to coordinate prep for and attendance at the meeting." Mr. Press did not provide any further justification for canceling, and the developers never agreed to another meeting.

The developers cite case law that says negotiations by themselves are not sufficient to extend appeal deadlines. But the plaintiff's never intended or sought an extension to file. While it may be unusual for a plaintiff to rely to any degree on the statements of the opposing counsel, it must be remember that the plaintiffs are not lawyers and were dealing with experienced real estate attorneys. The plaintiffs fully intended to file a timely appeal with the BZA and

were told that this date was 60 days from issuance of the certificate of occupancy. The appellants filed well within this deadline.

The appellants were further hindered in their efforts to file by the failure of the DCRA to make available copies of the approved plans or even the permit applications. Appellants and agents for the appellants made several attempts to obtain copies of the plans and applications during the filing period, but DCRA could not locate them. As noted in Mr. Canavan's letter of July 13, the DCRA was still in the process of "retrieving the building plans" as of the date of the letter. The plans and application have never been provided despite several requests.

The purported 10-day delay cited by the developers is neither prejudicial nor comparable to the case cited by the appellants. First, after having provided the appellants with a written assurances that the filing deadline is "August 10," the developer cannot creditably claim that an August 3 filing is somehow prejudicial. The developers had repeated and ample notice that a BZA appeal was forthcoming if a settlement was not in reach. At most the developers contend that the appeal is 10 days late, not long considering the magnitude of the zoning violation contemplated in this case.

DISMISSAL IS NOT IN THE PUBLIC INTEREST

The developers argue that the dismissal is necessary to serve the interests of people who "have already bought and occupied units." This argument is a red herring. First, the developers knew prior to any sale or occupancy the following: (1) that the DCRA had already found that their project was a gross violation of the applicable zoning regulations; and (2) that several parties including the local ANC were contemplating filing an appeal with the BZA.

Prospective buyers have told the appellants that they have been asked by the developers to move into the building as soon as possible, and that they have been given below-market rental rates as an interim step while purchase rights are resolved, as part of a calculated strategy to help the developers defeat any legal challenges to the construction. Under these circumstances, filling the building with innocent purchasers or renters can only be construed as premeditated attempt to discourage the Board and any other judicial body from ruling against the developers in this case.

The developers accuse the appellants of waiting to file an appeal "on issues that they knew about last year," and further states that this "is the kind of manipulation of the timing that the Board sought to halt with its Herron decision." This assertion is just wrong and turns blame for this fiasco on it head. The appellants are simply homeowners with no experience in zoning issues. They repeatedly sought answers from DCRA regarding various zoning violations on the project and were ignored or told that no violations were present. Only after community outrage got the attention of Council Member Graham did DCRA begin a review of the project, and only after this review did DCRA finally confirm at least some portion of what the community suspected.

The developers are represented by one of the top law firms in Washington. They contend they built a seven-unit structure, in a location where the zoning law allowed a maximum of three units, on the basis of information they received from a DCRA official they have yet to identify. They therefore are arguing to the Board that despite top-level legal representation, they embarked on a $2.5 million condominium project without knowledge of the most basic rule of an R-4 zone. Neither the developers nor the DCRA has provided any evidence to identify how such a mistake could have been made innocently or unknowingly.

At the same time, one person who had employed as a leading member of the LaKritz-Adler team and who directed construction at the 1636 Irving Street NW site has told the appellants he would be willing to testify that he was present when another worker told Mr. LaKritz he could obtain an official certificate needed for construction at one of their work sites by making a cash gift to a city official responsible for issuing that certificate, that he watched and listened as Mr. LaKritz verbally authorized that payment, and that he later watched as the cash gift was given to the city official in return for the certificate.

The developers also tell the Board in their motion that the appellant's limited reference to such possible criminal aspects to this case constitutes an attempt "to disguise their late filing." The appellants have no understanding of what connection the developers see between the two matters.

Related to this, the LaKritz-Adler development team issued a series of threats against the appellants, expressly aimed at deterring the appellants from describing the facts of this situation to potential buyers and their agents and even to the public at large. Such threats are not only disingenuous, given the right of the appellants to free speech, but possibly an illegal attempt to obstruct justice and silence the appellants from pursuing completely legitimate avenues of appeal. In an email message of July 30, Mr. Press discussed with other members of the developers' team the possibility of charging Mr. Basken with "extortion," without citing any facts to support such a claim. The appellants do not intend to be intimidated by this, and hope and trust that those responsible for protecting their city and its neighborhoods won't be intimidated either.

Neighbors throughout the block have expressed their outrage over the condominium complex at 1636 Irving Street NW and their support for the appellants' response to it. The ANC representing Mount Pleasant unanimously approved a resolution on May 23 expressing its opposition to a certificate of occupancy for 1636 Irving Street NW and declaring that allowing "such a precedent would be catastrophic" for residential neighborhoods throughout the city. The ANC chairman, Jack McKay, wrote an email declaring, "We're not going to brush this off as a fait accompli. That would be an intolerable precedent." City Council Member Graham has said he backs this appeal and has provided several members of his staff to help guide it. Even Mr. Canavan, in a Washington Post article, said that fighting illegal expansions was his top enforcement priority, adding: "If we find you, we will nail you."

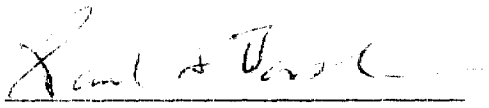
ANC ASKS BZA TO REJECT MOTION TO DISMISS

The developers cite the fact that the ANC, after unanimously approving the resolution on May 23 condemning the 1636 Irving Street NW development, split during its vote on July 22 on whether to file a BZA appeal. In fact, the abutters themselves asked for the ANC to refrain from bringing an appeal at that date, since the abutters at that point were involved in the negotiations with the developers -- as requested by the developers -- aimed at voluntarily paring back the project and sparing all sides the need for months of litigation and enforcement action.

The ANC again voted unanimously in this case on September 6, calling on the BZA to reject the motion to dismiss that is currently before the Board.

ANC member Rich Wysocki told the commission that he still has not received promised responses from DCRA officials concerning measurements and basic records of the permitting and construction at 1636 Irving Street NW. Mr. Wysocki described a letter he received from Gwendolyn Davis, the DCRA's liaison to the ANCs, in which Ms. Davis said officials "will continue to search for the misplaced records."

Respectfully submitted,



Paul Basken, appellant
1638 Irving Street NW
Washington, DC 20010
202-210-3071
paul@basken.com

Joshua Meyer, appellant
1640 Irving Street NW
Washington, DC 20010
202-365-2401
joshmeyerdc@yahoo.com

After recording please mail to:
Kass & Skalet, P.L.L.C.
1050 Seventeenth Street, N.W., Suite 1100
Washington, D.C. 20036

00-0073
1638 Irving Street, NW, Washington, DC
20010

SPECIAL WARRANTY DEED

THIS DEED, made this 15th day of August, 2000, by and between SONIA F.B. STENVALL, unmarried, party of the first part, and PAUL BASKEN and MAUREEN GREENWOOD, husband and wife, parties of the second part:

WITNESSETH, that in consideration of TWO HUNDRED NINETY THOUSAND DOLLARS AND 00 CENTS Dollars ($290,000.00), the said party of the first part does hereby grant unto the parties of the second part in fee simple as Tenants by the Entirety, all that piece or parcel of the land, together with the improvements, rights, privileges and appurtenances to the same belonging, situate in the District of Columbia, described as follows, to wit:

> Lot numbered Two Hundred Three (203) in Square numbered Twenty-five Hundred Ninety-one (2591) in a subdivision made by James Robbins of lots in Denison and Leighton's subdivision known as the "Lalin Estate", as per plat recorded in Liber 37 at folio 8 among the Records of the Office of the Surveyor for the District of Columbia.

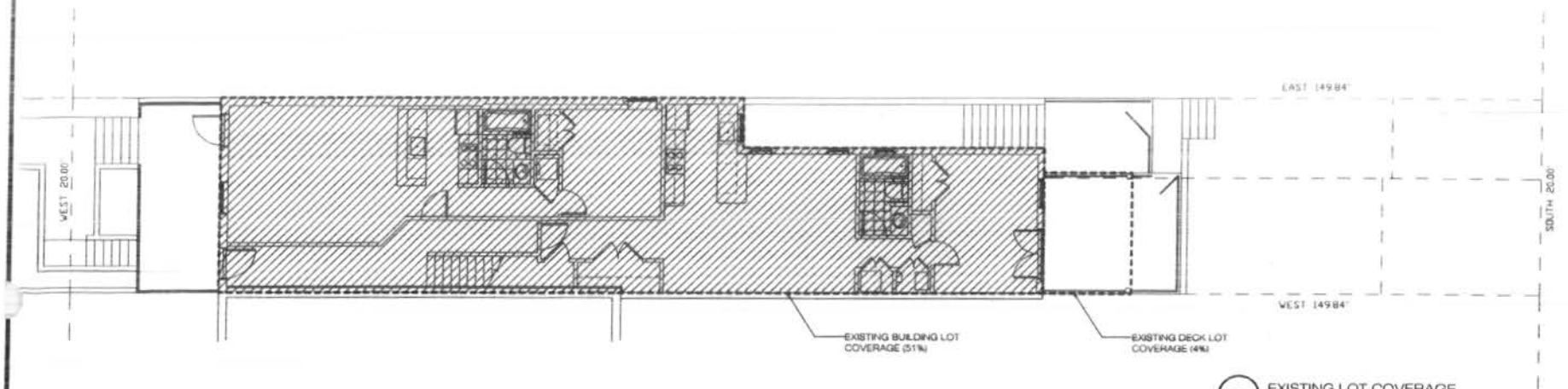
AND the said party of the first part covenants that she will warrant specially the property hereby conveyed; and that she will execute such further assurances of said land as may be requisite.

WITNESS her hand and seal the day and year hereinbefore written.

In Presence of--

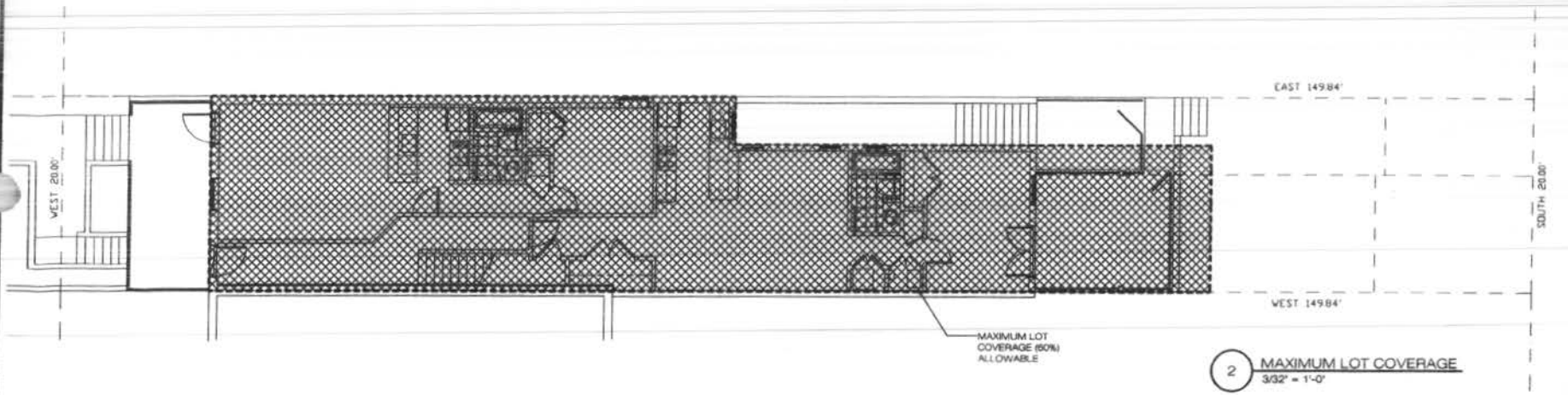
_____

_____ {Seal}
Sonia F. B. Stenvall



1 EXISTING LOT COVERAGE
3/32" = 1'-0"

TOTAL AREA OF LOT	2997 SF
MAXIMUM LOT COVERAGE ALLOWABLE	1798 SF (60%)
TOTAL AREA OF EXISTING BUILDING LOT COVERAGE	1531 SF (51%)
TOTAL AREA OF EXISTING DECK LOT COVERAGE	113 SF (4%)



2 MAXIMUM LOT COVERAGE
3/32" = 1'-0"

N

RICH MARKUS ARCHITECTS
3143 N STREET NW
WASHINGTON DC 20036
202.333.2733

1636 IRVING STREET
1636 IRVING STREET NW
WASHINGTON, DC 20010

LOT COVERAGE

REVISIONS

SCALE 3/32" = 1'-0"

DATE 19 MAY 2005

DRAWING NUMBER SK1

C:\Projects\1636 Irving\12\06\1636 Irving - with tax occupancy.dwg, Fred, 5/19/2005 11:14:35 AM

Yahoo! Mail - paulbasken@yahoo.com Print - Close Window

Date:Mon, 09 May 2005 21:28:10 -0400
From:"Jack McKay" <jack.mckay@verizon.net>
Subject:Re: Fwd: Fw: 1636 irving
To:paul@basken.com
CC:pastorascott@yahoo.com, g@ge1.org, rwysocki@mitre.org, rtonrhythm@boo.net

Paul -- well, I see that you did include Peter Muller and Dominic Sale on your e-mails about 1636 Irving. Why neither of them brought this to the ANC I do not know. It should have been obvious that this required a zoning variance, for lot coverage, and for occupancy. Had it gone to BZA for a variance, it would then have come to us.

Somehow this never went to BZA, and Peter and Dominic didn't pursue it, so here we are. HMP complained too, but evidently this never went to HPRB, either. Either route, BZA or HPRB, would have stopped this cold.

I work hard at getting people to come to the ANC first, before filing for permits. This only reinforces my belief that that's the way to go.

Well, we're making a stink about this now. Unfortunately, the thing is built. Nonetheless, we're not going to brush this off as a fait accompli. That would be an intolerable precedent.

As you can tell, Rich Wysocki is taking this matter seriously. So let's see how we can make the best of a very unfortunate situation.

-- Jack

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT B468513

Date 12/17/04

Address of work 1636 [illegible] STREET N.W.

Lot 0204 Square 2591

Permission is hereby granted to

1636 IRVING, LLC.

(Owner) NO

with the authorization of the owner of record and in accordance with the application dated BOTH on file for this permit

Authorized work is in conformance with the Zoning Regulations and consists of REVISION TO #465646 -

ADDITION OF [illegible] KITCHEN ON FIRST, SECOND, & THIRD FLOORS.

CONVERTING 3 [illegible] INTO 7 UNITS.

REVISION OF [illegible] PREVIOUSLY APPROVED ADDITION. SUBJECT TO ZONING

APPROVAL OF NUMBER OF UNITS IN ZONE.

TOTAL PERMIT FEE $

FILING $

FEE PAYABLE $ 457.00

FOR INSPECTIONS CALL [illegible] -4641

No. of Bldgs. 4

Length

Height

Value $

No. of Stories 3 W/B.

No. of Bldgs.

To be occupied as APT. BLDG.

Space above for

Projections:

Owner 4326 8TH ST. NW. WDC.

Amount $

BY DIRECTOR OF CONSUMER AND REGULATORY AFFAIRS

Chief, Permit Issuance Branch

CLARK

DIRECTOR

Permit Clerk

E. KING

21/2005

Wayne Kahn 1D01 Secretary rtonrhythm@boo.net	**Mount Pleasant Advisory Neighborhood Commission**	**Gregg Edwards 1D04** Vice Chair g@ge1.org
1D02 vacant	anc 1D	**Rich Wysocki 1D05** Treasurer rwysocki92@verizon.net
Jack McKay 1D03 Chair jack.mckay@verizon.net	P.O. Box 43529 Washington, DC 20010 Tel. 462-8692	**Angelia Scott, 1D06** pastorascott@yahoo.com

ANC 1-D Irving Street Zoning Resolution

Passed by unanimous vote at the legally noticed, public monthly meeting of May 23, 2005, with a quorum present.

Resolved, that ANC1D advises the District Department of Regulatory and Consumer Affairs (DCRA) to refrain from issuing any certificate of occupancy for the residences at 1636 Irving Street Northwest, as currently configured, pending approval from the District Office of Zoning ; resolved further, that ANC1D advises the District Office of Zoning to review this property immediately for possible violations of R4 zoning regulations, and notify the ANC of any decisions and concerns, with full description of rationale.

Issues and Concerns

The building at 1636 Irving Street Northwest has been developed into seven dwelling units on a lot of 2997 square feet area. According to DCMR 11, 401.3, an "apartment house" in an R-4 district must have 900 square feet of lot per dwelling unit, implying no more than three dwelling units on this lot. The posted construction permit specifies that the permit is "subject to zoning approval of number of units in zone".

This development, if allowed, would eliminate the very foundation of an R-4 District, namely that "the R-4 District shall not be an apartment house district as contemplated under the General Residence (R-5) Districts, since the conversion of existing structures shall be controlled by a minimum lot area per family requirement" (Title 11, Section 330.3). Most row houses can, within the 900 square foot per apartment rule, be divided into three dwelling units; whereby they become, by DCMR definition, "apartment houses"; whereby, if the precedent set by this development stands, it might be possible to increase the number of apartments without limit, in disregard of the 900 square foot per apartment rule. Such a precedent would be catastrophic for R-4 neighborhoods in Mount Pleasant, Columbia Heights, and elsewhere in the District of Columbia.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Office of the Director



May 26, 2005

[Served via email and regular mail]

Jack McKay, Chair
Mount Pleasant Advisory Neighborhood Commission, 1-D
P.O. Box 43529
Washington, D.C. 20010

Re: ANC 1-D Irving Street Zoning Resolution

Dear Commissioner McKay:

This letter is in response to a May 23, 2005 Advisory Neighborhood Commission 1-D (ANC-1D) Resolution related to the property located at 1636 Irving Street, N.W. In the Resolution, ANC-1D requested that the Department of Consumer and Regulatory Affairs (DCRA) refrain from issuing any Certificate of Occupancy for the property, as presently configured, pending approval from the D.C. Office of Zoning. The Resolution suggests, in support of the requested action, that the building permit issued for the property on December 17, 2004 allows the conversion of the Property into a seven-unit apartment house in violation of the minimum lot area requirements of 11 DCMR § 401.3 and § 330.5(c).

Records show that on September 9, 2004, DCRA issued a building permit (B465646) to construct a three-story rear addition to the structure. Several months later, on December 17, 2004, DCRA issued a second building permit (B468513) authorizing the property owner to construct an additional three units for a total of seven units in the structure. DCRA's examination of property records and information available to the agency disclosed errors in the review and issuance of the building permits. As you are aware, the structure is now complete and units are now for sale; in fact, only cosmetic work remains. The building code official has determined that the structure meets building code requirements.

At the very time when I have committed to restoring the confidence of the community in this agency, I cannot allow this situation to undermine that confidence. While there is no way that I can correct this situation to the satisfaction of all the affected parties, I will not penalize those who relied upon the flawed decisions of the regulatory agency charged with approving the work.

I am deeply disturbed that such gross mistakes were made at the highest levels of the zoning administration with such serious consequences. I apologize to the Commission and to the community for this error.

The Zoning Administrator will not deny the property owners a Certificate of Occupancy for the property on the basis of the zoning review error. ANC 1D, of course, has the right to appeal this decision to the Board of Zoning Adjustments (BZA).

Finally, it is important that you know that I have not taken this matter lightly. In addition to ordering a complete review of the procedures used by the Zoning Administrator in this matter, I will take appropriate and serious personnel actions against those staff members involved. Be assured that I will not allow poor staff performance to impact the credibility of this agency or undermine the "foundation of an R-4 District," as the ANC Resolution states.

Should you have further questions regarding this matter, please feel free to contact me at (202) 442-8936 or via email at patrick.canavan@dc.gov. You may also contact my Chief of Staff, Theresa Lewis, at (202) 442-8937.

Sincerely,

Patrick J. Canavan, Psy.D.
Director

cc: Deputy Mayor Stanley Jackson
Councilmember Jim Graham

Yahoo! Mail - paulbasken@yahoo.com Print - Close Window

From:"Robb M. LaKritz" <robb@gallatincompany.com>
To:paul@basken.com
Subject:RE: final settlement offer
Date:Wed, 8 Jun 2005 16:08:59 -0400



This all sounds reasonable. Shall we have our lawyer (who would draft the agreement) call the title attorney?



-----Original Message-----
From: paul@basken.com [mailto:paulbasken@yahoo.com]
Sent: Wednesday, June 08, 2005 3:20 PM
To: Robb M. LaKritz
Subject: RE: final settlement offer

i think i'll agree to this, though i do need some clarifications in terms of the escrow. i have an attorney who i'd like to be the agent, and also propose terms for release of the escrow that would break the amount up into seven equal parts, each to be released upon the sale of each unit. and to guard against any failure to promptly sell the units for which i'm not responsible, i'd like some time frame, perhaps six months or so, at which time any remainder of the escrow would be released if you have not faced any legal challenges by that point. and of course we'd need to get specifications and a timeline on that wall to go up alongside the balconies. the key point would be that it would have to be done in a way that it's not removeable by future owners, either by noting it in an unremoveable part of a deed, or by simply placing it on or across our property line. and of course the other remaining elements of our previous agreement would need to be fulfilled, most notably the fixing-up of stuff such as the brickwork along the property line and the extension of the rear fence to at least eight feet. also, i expect the attorney fee to be relatively minimal for such a service, but i'd like you to cover it.

i'd have plenty more to say in response to some of what you've written below, but if you are agreeable, perhaps it would all be moot.

thanks.

--- "Robb M. LaKritz" <robb@gallatincompany.com>
wrote:

> You may still have a false sense about mediation.
> Mediation is a
> non-binding exchange where the parties share
> information, and on that
> exchange, try to reach an amicable resolution. The
> mediator does not
> make findings of fact. The mediator merely keeps
> the parties from
> shouting at each other. The deck is not stacked; in

> fact, there is no
> deck in mediation, because the result is completely
> non-binding. If
> anything, it gives you an uninterrupted opportunity
> to ask questions of
> us. We're happy to share with you how strong we
> think our case is; we
> just don't want to get into a shouting match or
> endless emails about it.
>
>
> Your last reply IS THE VERY REASON why we need a
> mediation. Depsite us
> telling you, now, four times IN WRITING that we are
> not closing on any
> units on June 10th, you still don't believe us, and
> would risk bringing
> these settlement talks to a stretching halt! I will
> say it again. NO
> CLOSING DATES HAVE BEEN SET FOR THE SALE OF ANY UNIT
> AT 1636 IRVING. We
> agreed last week, in good faith, and in writing, to
> give these talks a
> chance.
>
> All this aside, then, my response to your last email
> is: if we can't yet
> agree on a method for determining damages (which is
> fine for now), let's
> at least have a referee to our discussions so you
> can understand how
> strong our case is! We have two options: (1) our
> attorneys can talk
> (which may actually be productive) or we can
> schedule a mediation
> session for next week, where you can ask all the
> questions you want...
>
> I will be disappointed if you file an appeal because
> you couldn't agree
> to sit and talk with a mediator, or at least have
> our attorneys talk to
> each other. I would consider that a hasty end to
> our recent
> discussions.

Government of the District of Columbia
Department of Consumer and Regulatory Affairs

Forwarded By Mail and E-Mail

July 13, 2005

Honorable Jim Graham, Chairperson
Committee on Consumer and Regulatory Affairs
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 105
Washington, D.C. 20004

Dear Council Member Graham:

You, your constituents, and the Mt. Pleasant ANC have expressed dissatisfaction with the conversion of a three-unit apartment building to a seven-unit apartment building at 1636 Irving Street, NW. Let me first state that I apologize for the difficulty that this conversion has caused.

As you are probably aware, subsection 330.5 of the Zoning Regulations allows the conversion of a pre-1958 building to an apartment house, provided that there is a ratio of at least 900 square feet of lot area per unit. We issued a building permit at 1636 Irving Street, NW to allow the expansion under the mistaken assumption that the building was already an apartment building before 1958 and therefore not bound by the 900 square feet per unit limitation.

We later learned, once construction had been completed and the units sold, that this assumption and other calculations as to lot occupancy were in error. At that time, after balancing the relative equities involved and factoring in legal considerations, DCRA concluded that it would not force the owner to remove what was already constructed. This was not an easy decision, but one we think was appropriate given the unique circumstances we were facing.

Following are responses to the questions raised by Mr. Paul Basken, a resident whose property abuts 1636 Irving Street, N.W.

1. **What permits or certificates have you granted 1636 Irving Street, N.W. and on what dates?**

Response:

Permit Number	Purpose	Date
CO9912	Certificate of Occupancy - 7 unit apartment	6/10/05
B465646	Three story rear addition interior model as per plans.	9/9/04
PLBG 90706	Install fire sprinklers	1/27/05
PLBG 84658	Install bath tubs, showers, water closets, washer box, sinks, basins, water heaters, gas ranges	10/5/04
EL90500	Fire alarm, smoke detectors, pullstations and strobe/horns	1/24/05
EL88218	7-125 amps, 1-200 amps, 14 smoke detectors	12/7/04
B468513	Addition of one kitchen on first, second, and third floors. Converting 3 units into 7 units. Revision of previously approved addition.	12/17/04

2. **Who at DCRA told the developers that they could build a four unit building and then a seven unit building?**

Response:

On September 19, 2004, DCRA granted a building permit to allow a three story rear addition to an existing three unit apartment building at 1636 Irving Street, N.W., Washington, D.C. This permit, # B456646, also provided for the interior remodeling of the existing three unit apartment building into a four unit apartment building.

The second building permit (B468513) was issued on December 17, 2004. This permit provided for increasing in the number of units within the building from its previously approved four (4) units to seven (7) units.

While several staff members were involved in the approval of these permits, two of these staff members reviewed the applications for compliance with the District's Zoning Regulations. Both staff members were experienced with the Zoning Regulations. Neither is presently employed with DCRA.

3. **According to DCRA records, what past experience have these developers had in building in an R-4 zone?**

Response:

DCRA does not maintain information regarding the experience that developers have with building in an R-4 zone.

4. **Does the building as it now stands at 1636 Irving comply with all other zoning requirements. Does it match the blueprints submitted with the permit applications? In particular, does the building, including its balconies, exceed the 60 percent lot coverage limit? Does it setback on the east side violate a six-foot set back rule? Are the windows on the property on the west side legal? Is there any kind of relevant restriction to the effect that the residential portion of an apartment building cannot cover more than 40 percent of the lot? What are your numerical calculations of lot size and building size?**

Response:

The Department is retrieving the building plans to respond to these particular questions and will respond no later than Friday, July 15, 2005.

5. **What is your understanding of the last date at which any interested party could file for a BZA appeal of your decisions in this case?**

Response:

The regulation is reprinted below.

"11-3112. PRE-HEARING PROCEDURES FOR APPEALS

3112.1 The rules of procedure in this section apply to all appeals filed with the Board pursuant to §§ 3100 and 3200.

3112.2 Any person aggrieved by any order, requirement, decision, determination, or refusal made by an administrative officer or body, including the Mayor of the District of Columbia, in the administration or enforcement of the Zoning Regulations may file a timely appeal with the Board as follows:

(a) An **appeal** shall be filed within **sixty (60)** days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier."

In closing, I can assure you that we have taken measures to make sure that such errors do not occur again and will pay particular attention to the rule limiting such conversions to 900 square feet of lot area per unit. Should you have further

questions regarding this matter, you may contact me directly or your staff person may contact Theresa D. Lewis, Chief of Staff, on 442-8937.

Sincerely,

Patrick Canavan, Psy.D.
Director

cc: Paul Baskin
Jack McKay, Chairperson
Mount Pleasant ANC 1-D

Yahoo! Mail - paulbasken@yahoo.com Print - Close Window
Date:Fri, 22 Jul 2005 08:26:26 -0400
From:"Fredric A. Press" <fpress@fpresslaw.com>
Subject:RE: getting back on 1636
To:paul@basken.com, "Brian L. Kass" <briankass@kmklawyers.com>
CC:josh@gallatincompany.com, robb@gallatincompany.com,
chris.collins@hklaw.com, paul.kiernan@hklaw.com,
spotter@fpresslaw.com

I want to direct your attention to the language in 1(d)(ii) which provides,

"1636 Irving agrees to use commercially reasonable efforts to
contest such event in question or cause it to be dismissed"

I hope Brain will concur with my assessment that that particular phrase has
legal significance. That phrase obligates 1636 to take prompt steps to content
the event; if it sits still and waits for 30 days to expire that is a breach of
its obligation "to use commercially reasonable efforts to contest such event in
question or cause it to be dismissed," which will be actionable by you.

Is there a gradation of steps that they could take where it could be argued that
they didn't "really pursue a contest or dismissal." Absolutely. But if you
think they "gamed" the contract in such an instance, you have a basis for a suit
where an impartial judge will decide the issue based on the facts in question at
that time. You are, in no ways, left holding the bag.

I also don't understand why you feel you have a need to contact your ANC representative if we haven't resolved this matter by this afternoon. First of
all, you have until August 10 to file an appeal. Second - and I think you have
to agree - at this stage we have no conceptual differences. What is being
tossed back and forth is simply language to express what has been agreed to in a
manner that will satisfy your concerns. If you must tell your ANC representative, I think it should be just that. That, while the agreement has
not been signed yet, the basic terms have been agreed to and all that is left is
the "wordsmithing" of the agreement itself.

Keep in mind - and please understand this is not meant in any adversarial manner
- but if you portray a negative impression to your ANC representative that
causes the ANC to file an appeal, then there will be no purpose in having any
further discussions as the proposed settlement with you will instantly become
moot.

I think you have seen significant movement on Josh and Robb's part since Tuesday
evidencing their genuine desire to resolve this matter amicably.

I do have one further proposal - which I have discussed with no one as of this
morning. My proposal is that, solely in regard to the cited phrase above, I add
language that obligates both sides to engage in non-binding mediation if you
feel they have "gamed" the system. That will add another layer of independent
eyes to your concerns - and, because it would be non-binding - if you were still
dissatisfied after the mediation you would not be precluded from filing a suit.
So, in essence, with regard to this issue, you would get "two bites at the
apple" (to use a legal phrase) for an independent review if you thought you
were aggreived.

As an aside, it is not entirely clear whether you will get this by email so I am
also faxing it to you c/o 202-624-1305 and I also ask that Brian contact you at
his earliest convenience to make certain you have received this email and
understand its import.

Sincerely,

Fred Press

At 07:55 PM 7/21/2005, paul@basken.com wrote:

> mr press... i've had a moment to read through it,
> and the provision addressing the concern i described
> doesn't seem to me to fix it.
> i'm certainly willing to hear brian's assessment,
> but my reading of it is that it remains a fairly
> simple clause for your side to game, in that your side
> could merely wait 31 days after the filing of a
> third-party appeal, and then begin the process of
> getting it dismissed.
> and even if your side didn't wait that long, it
> doesn't seem at all difficult to imagine that it could
> take 30 days to gain a simple dismissal. i have no
> experience on which to judge that, and need to rely on
> brian for that.
> again, i do appreciate that this is a difficult
> challenge for your side to phrase, since your side
> obviously needs a level of protection against a case
> that cause you material costs and delays. but it seems
> to me that any case filed after the statuatory
> deadline would be easily dismissed, and i can't see
> how i can sign an agreement that would forfeit my
> rights to a meaningful remedy in this case.

i'm willing to keep working on this through tomorrow, but at some point tomorrow afternoon i need to contact my anc representative and let him know our position on the vote scheduled for tomorrow night.
thanks, paul

--- "Fredric A. Press" <fpress@fpresslaw.com> wrote:

> Attached is the revised draft of the proposed
> settlement agreement, along
> with a blacklined version showing the latest
> changes. As I indicated
> earlier, we have gone about as far as we can to
> address your concerns; if
> they still exist, we need to get everyone locked in
> a room.
>
> Please note that, because you are going to be away,
> I have added a
> "Counterpart Execution" clause. As Brian will tell
> you, this is purely for
> convenience - it allows each side to sign a separate
> copy and then all the
> pages are assembled together. There is no
> substantive issue raised by its
> inclusion.
>
> I don't know if you will get this email before your
> departure. I would ask
> that Brian confirm with you whether you have
> received it and, if not, he
> fax to you copies of the attached.
>
> Finally, please note that I need your zip code and
> wife's name to complete
> the attached. Alternatively, if this is acceptable,
> you can fill that info
> in ink and sign and return it by fax. I will
> arrange for asigned copy to
> be faxed to you by Josh and Robb and when you return
> to town, we can
> exchange "hard" copies.
>
>
>
>
>
> At 04:22 PM 7/21/2005, paul@basken.com wrote:
> > ok thanks. i'm leaving for the airport in about
> an
> >hour, and will be back monday evening. the key
> thing
> >is to have an agreement we support so we can tell
> the
> >anc in time for their meeting tomorrow night.
> > i will be fully reachable during the time i am
> away,

> >and throughout the weekend, by email, cell
> >(202-210-3071) and fax (202-624-1305).
> > thanks.
> >
> >
> >
> >--- "Fredric A. Press" <fpress@fpresslaw.com>
> wrote:
> >
> > > Paul - fyi - I am working on a revised draft of
> the
> > > agreement which we hope
> > > will address all of your concerns. I expect to
> > > finish it and circulate it
> > > within the next 60 minutes + or -. Assuming it
> is
> > > acceptable to you, I
> > > will prepare execution copies. I assume if I
> get
> > > you execution copies
> > > tonite, you can execute the agreement and return
> it
> > > (through Brian, if
> > > necessary) before you leave.
> > >
> > > If, however, you still have lingering concerns,
> I
> > > propose that we have
> > > another meeting of the principals and counsel at
> > > your earliest convenience,
> > > as I think further email communications and
> > > revisions will not be
> > > particularly fruitful and I am confident that if
> > > everyone is locked in a
> > > room together we will reach an agreement
> acceptable
> > > to all.
> > >
> > >
> > >
> > > At 11:03 AM 7/21/2005, paul@basken.com wrote:
> > > > mr press, thanks. this looks good. excepting
> the
> > > >balcony issue, a solution to which we are both
> > > waiting
> > > >on, you answered everything satisfactorily to
> me
> > > >except one very important thing:
> > > > we still need to figure out what happens if
> we
> > > sign
> > > >this agreement, and then i wait past the dates
> of a
> > > >legally allowable appeal to the bza or other
> > > avenues,
> > > >and then someone files an appeal that is
> clearly
> > > >beyond the statuatory time limits.
> > > > in that case, the developers would be in a
> > > >potentially perfect position, and i'd be left
> > > >completely holding the bag, because the

> developers
> > > >would have escaped the entire financial
> obligation
> > > to
> > > >me, and i'd be left with no further legal
> avenues
> > > of
> > > >appeal.
> > > > i hope you can understand that i simply
> cannot
> > > >accept that.
> > > > we talked around that subject a bit on
> tuesday,
> > > but
> > > >never really reached an agreement, and the more
> i
> > > >think about it, the more i realize that's
> really
> > > the
> > > >worst and trickiest potential obstacle to an
> > > >agreement.
> > > > i can understand that the developers don't
> want
> > > to
> > > >be a position where they have to fight a bza
> appeal
> > > or
> > > >other legal/regulatory case after the
> statuatory
> > > time
> > > >limit expires, because the mere act of fighting
> > > that
> > > >appeal could cost them some degree of time and
> > > money.
> > > > but the risk to me is far greater, because
> if i
> > > wait
> > > >until after the statuatory time limits, it
> seems to
> > > me
> > > >that i would be completely out of options.
> > > > therefore i think we have to make a hard
> > > decision
> > > >here.
> > > > if your side does not want to give me any
> > > protection
> > > >against the possibility of an appeal that is
> filed
> > > by
> > > >a third party after the expiration of the
> > > statuatory
> > > >time limits, i hope you can appreciate that the
> > > >agreement is virtually worthless to me, because
> i
> > > >would be left with absolutely no protection
> against
> > > a
> > > >trivial filing that is easily dismissed by any
> > > >competent lawyer.
> > > > on the other hand, i do understand that your
> > > side

> > > >doesn't want to be facing the added time of
> expense
> > > of
> > > >swatting away such an action, however easy that
> act
> > > of
> > > >swatting might be.
> > > > brian suggested during our meeting tuesday
> that
> > > >there could be some compromise in which the
> appeal
> > > >would have to get past a certain phase
> (evidentiary
> > > >hearing? or was it some other term?) to be
> > > considered
> > > >grounds on which the $150k payment would be
> voided.
> > > it
> > > >doesn't seem that we really worked on that idea
> at
> > > all
> > > >on tuesday, but it really does need to be
> > > addressed.
> > > > the kind of language necessary here would
> get
> > > into
> > > >legalities beyond my ability to make a
> competent
> > > >assessment, and i therefore need to leave it to
> > > brian
>
=== message truncated ===

Do You Yahoo!?
Tired of spam? Yahoo! Mail has the best spam protection around
http://mail.yahoo.com

Fredric A. Press, Esq.
Press & Associates, LLC
7910 Woodmont Avenue
Suite 810
Bethesda, MD 20814

Tele No. (301) 913-5200
Fax No. (301) 913-5205
fpress@fpresslaw.com

Information contained in this email is privileged and confidential and
directed
solely to the party(ies) listed above. If you received this
transmission in
error, please contact the sender and destroy this email.

Yahoo! Mail - paulbasken@yahoo.com Print - Close Window
Date:Wed, 27 Jul 2005 10:43:10 -0400
From:"Fredric A. Press" <fpress@fpresslaw.com>
Subject:Re: Fwd: RE: Fwd: RE: 1636 Irving
To:paul@basken.com
CC:briankass@kmklawyers.com, josh@gallatincompany.com,
robb@gallatincompany.com, paul.kiernan@hklaw.com,
chris.collins@hklaw.com



Too many participants to coordinate prep for and attendance at the meeting.



At 10:11 AM 7/27/2005, paul@basken.com wrote:

ok. any explanation?

--- "Fredric A. Press" <fpress@fpresslaw.com> wrote:

> We need to cancel for today.
>
>
> At 08:31 AM 7/27/2005, paul@basken.com wrote:
> > i haven't seen any message back since this...
> are we
> >still confirmed for 1 pm today, at the same
> location
> >as last time?
> >
> >
> >--- "paul@basken.com" <paulbasken@yahoo.com> wrote:
> >
> > > Date: Tue, 26 Jul 2005 14:22:39 -0700 (PDT)
> > > From: "paul@basken.com" <paulbasken@yahoo.com>
> > > Subject: RE: Fwd: RE: 1636 Irving
> > > To: "Brian L. Kass" <briankass@kmklawyers.com>,
> > > Fredric Press <fpress@fpresslaw.com>
> > > CC: paul.kiernan@hklaw.com,
> chris.collins@hklaw.com,
> > >
> > > Robb LaKritz <robb@gallatincompany.com>,
> > > Josh Adler <josh@gallatincompany.com>
> > >
> > > brian says he'll be there. i will too.
> > >
> > >
> > > --- "Brian L. Kass" <briankass@kmklawyers.com>
> > > wrote:
> > >
> > > > Paul, I am okay with tomorrow at 1.
> > > >
> > > > -----Original Message-----
> > > > From: paul@basken.com
> > > > [mailto:paulbasken@yahoo.com]
> > > > Sent: Tuesday, July 26, 2005 4:06 PM
> > > > To: Fredric A. Press; Josh Adler; Robb LaKritz
> > > > Cc: Brian L. Kass; paul.kiernan@hklaw.com;
> > > > chris.collins@hklaw.com
> > > > Subject: Re: Fwd: RE: 1636 Irving

> > > >
> > > > thanks. as i said, i'm willing. still
> waiting to
> > > > hear from brian on
> > > > his reaction. he's in a meeting at the moment
> > > > >
> > > > >
> > > > > --- "Fredric A. Press" <fpress@fpresslaw.com>
> > > wrote:
> > > > >
> > > > > > I need for you to confirm that you will
> attend
> > > > tomorrow at 1 pm so
> > > > > > that everyone can adjust their schedules
> > > > accordingly.
> > > > > > Please advise at your
> > > > > > earliest convenience.
> > > > > >
> > > > > >
> > > > > > At 02:21 PM 7/26/2005, Fredric A. Press
> wrote:
> > > > > > >J&R will have a checkbook with them to pay
> the
> > > > $2k.
> > > > > > However, they would
> > > > > > >like a relatively detailed statement for
> time
> > > > > > incurred through tomorrow
> > > > > > >and Brian's agreement that if the final
> fees do
> > > > not
> > > > > > exceed $2K, the
> > > > > > >balance will be refunded to J&R.
> > > > > > >
> > > > > > >
> > > > > > >At 11:48 AM 7/26/2005, paul@basken.com
> wrote:
> > > > > > >> despite my skepticism, i'm willing to
> try
> > > it.
> > > > > > brian,
> > > > > > >>however, needs to be paid first. thanks.
> > > > > > >>
> > > > > > >>
> > > > > > >>
> > > > > > >>--- "Fredric A. Press"
> <fpress@fpresslaw.com>
> > > > > > wrote:
> > > > > > >>
> > > > > > >> > Paul - First, I think there is some
> degree
> > > of
> > > > misunderstanding
> > > > > > >> > and miscommunication between you and
> Brian
> > > on
> > > > the
> > > > > > one
> > > > > > >> > hand, and our group on
> > > > > > >> > the other. Second, I think there is
> room

> > > for
> > > > further movement on
> > > >
> > > > > >> > the issues on both sides. However, we
> can
> > > not
> > > > clear these
> > > > > >> > misunderstanding and miscommunications
> or
> > > > negotiation the terms
> > > > > >> > of
> > > > > the
> > > > > >> > agreement by email. It
> > > > > >> > simply doesn't allow for detailed
> > > > explanations
> > > > > where
> > > > > >> > they would be helpful.
> > > > > >> >
> > > > > >> > We believe a meeting will be fruitful -
> and
> > > > we
> > > > > think
> > > > > >> > that will be instantly
> > > > > >> > clear to you and Brian if you and Brian
> > > will
> > > > attend
> > > > > >> > a meeting tomorrow as
> > > > > >> > requested.
> > > > > >> >
> > > > > >> > Please reconsider your position on
> > > > non-attendance.
> > > > > >> >
> > > > > >> >
> > > > > >> >
> > > > > >> > At 11:27 AM 7/26/2005, paul@basken.com
> > > wrote:
> > > > > >> > >   mr. press... attached below is
> brian's
> > > > response.
> > > > > >> > i
> > > > > >> > >agree fully with it. robb made a
> > > commitment
> > > > to
> > > > > pay
> > > > > >> > his
> > > > > >> > >fees and your side is obliged to do
> that.
> > > > > >> > >   and i agree with brian that there
> seems
> > > to
> > > > be
> > > > > >> > little
> > > > > >> > >reason to meet again if you have said
> your
> > > > clients
> > > > > >> > >will insist upon a complete waiver for
> > > issues
> > > > > >> > outside
> > > > > >> > >the scope of the zoning dispute. that
> > > simply
> > > > was

> > > > > >> > not
> > > > > >> > >part of the outline that robb agreed
> to,
> > > and
> > > > > it
> > > > > > >> > would
> > > > > > >> > >be irresponsible to myself and my
> family
> > > for
> > > > > me to
> > > > > > >> > >sign such a thing.
> > > > > > >> > > i have already made clear my
> > > willingness
> > > > > to
> > > > > > >> > assert
> > > > > > >> > >in writing as part of the agreement
> that i
> > > > > have no
> > > > > > >> > >plans or intentions to file any cases
> in
> > > the
> > > > > event
> > > > > > >> > of
> > > > > > >> > >a settlement. i simply want no more or
> > > less
> > > > > > >> > protection
> > > > > > >> > >than anybody else would have against
> > > > > unforseen
> > > > > > >> > future
> > > > > > >> > >actions by their neighbors.
> > > > > > >> > > also, i have said i will
> reluctantly
> > > > > accept
> > > > > > an
> > > > > > >> > >eight-month payment window, but i will
> not
> > > > > > accept
> > > > > > >> > >terms that allow your clients to void
> the
>
=== message truncated ===

Start your day with Yahoo! - make it your home page
http://www.yahoo.com/r/hs

Fredric A. Press, Esq.
Press & Associates, LLC
7910 Woodmont Avenue
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Yahoo! Mail - paulbasken@yahoo.com Print - Close Window
Date:Sat, 30 Jul 2005 08:47:17 -0400
To:paul.kiernan@hklaw.com, paul@basken.com
From:"Fred Press" <fpress@fpresslaw.com>
Subject:Re: 1636 irving
CC:briankass@kmklawyers.com, josh@gallatincompany.com,
robb@gallatincompany.com, chris.collins@hklaw.com

First, if I read the header correctly, he wrote this at @ 2:41 a.m. this
morning. So, obviously, he didn't get too much sleep and that strategy worked.

Second, I'd call this a bit of "Whistling Past the Graveyard."

Third, his comments about "attempting to salvage some of the loss in value
i feel our property has suffered" show how your claim of extortion would be
received, so I'd drop that for now.

Finally, for a brief period in my life, I worked on Cap Hill for Lee Metcalf from Montana. We got letters like this all the time. I suggest we
might want to respond to PB in the same way.

Dear Mr. Basken:

Very truly yours.

At 08:23 AM 7/30/2005, paul.kiernan@hklaw.com wrote:
>Mr. Basken, please stop sending emails to my clients. Mr. Kass can
>co"mmunicate your thoughts to me and I'll communicate them to my
>clients. Thankl you.
>Paul Kiernan
>202-663-7276 (w)
>202-246-7466 (c)
>
>
>
>-----Original Message-----
>From: paul@basken.com
>To: paul.kiernan@hklaw.com
>CC: briankass@kmklawyers.com; josh@gallatincompany.com;
>robb@gallatincompany.com; chris.collins@hklaw.com; Fredric A. Press;
>theminger@mcwilliamsballard.com
>Sent: Sat Jul 30 02:41:53 2005
>Subject: 1636 irving
>
>mr. kiernan,
> thanks for your printed message. as far as its
>method of delivery, though, i'd like to point out that
>i don't believe i've ever failed to respond to any
>emails sent from your side, so i'm not sure why you
>felt it necessary to walk up onto our porch and stick
>it through our mail slot. but just to be clear, i'd
>like you to refrain from that practice. if you feel at
>some point you need to make any kind of legal service

>against me, then please follow established legal
>procedures, and keep your feet off our property
>please. that goes for anyone associated with you.
>after this warning, it would be considered
>trespassing.
>   the only exception, of course, would be anyone
>performing work in conjunction with the so-called
>"memorandum of understanding" that your clients signed
>with me last year. you may have missed it in your
>apparent excitement over some of the other words in my
>email, but i've now asked twice in recent emails for
>your side to affirm your clients' intention to fulfill
>their obligations under that agreement, and both times
>in your responses your side seems to have omitted an
>answer on that point. i don't know for sure if that
>omission was intentional. but at this point, if you
>continue to withhold an answer, i will of course have
>to assume an intent to violate that agreement, and
>take corresponding legal action in that regard.
>   now, as to the things you did decide to comment
>upon, i will tell you i read your comments as blatant
>threats, designed to intimidate me into not asserting
>my legal rights. your clients have repeatedly made
>similar threats against me, most aggressively when
>they spent an hour on the phone with me falsely and
>repeatedly accusing me of having initiated the dcra
>action that led to the most recent stop-work order.
>these types of threats, in my opinion, reflect poorly
>upon you.
>   i realize from the letterhead that you are perhaps
>some type of lawyer by training, but it's not clear
>from the words you've typed underneath that letterhead
>that you have a lot of understanding about the libel
>laws that you are attempting to discuss. therefore
>i'll try to explain it to you in real simple terms:
>for something to be libel, it needs to be factually
>inaccurate. period. this is a very important thing for
>you and your clients to remember next time you feel
>you'd like to issue more threats against me.
>   then allow me to remind you of several other
>important facts, perhaps the most important of which
>is this: the head of the dcra has written and publicly
>distributed at least two letters in the past two
>months in which he makes clear the construction at
>1636 irving nw is in clear violation of the zoning law
>governing an R-4 district. also, the anc, the
>officially constituted neighborhood advisory panel, as
>well as the city councilman representing this area,
>are among a series of elected officials who have
>expressed their dismay over this illegal construction.
>i'm confident you've seen at least one of the letters
>from the dcra, but i'll attach a copy here just to be
>sure. these letters are not a figment of my
>imagination, as much as you clearly seem to wish they
>were. they state in plain english, from the top
>authority on this matter in the city, that the
>building at 1636 irving sits in clear violation of the
>city's zoning laws.
>   you seem particularly confused by my comments on
>media affairs and criminal affairs. perhaps your
>memory is faulty, or your clients haven't been

>forthright with you, but these are not matters of
>threats. in the case of media affairs, i have already
>been contacted by one media outlet for comment on this
>case, and i told your clients of that request at the
>time it occurred, and i told your clients that for the
>period of our negotiations, i would not participate in
>such interviews. i'm not clear what you see there as a
>threat. in any future discussions with the media, i
>have no intention of telling reporters, or anyone
>else, anything less than the full truth about this
>situation. does that somehow pose a threat to you or
>your clients?
> and as for the potential criminal avenues, i told
>your clients right from the start that the facts about
>the situation raised obvious concerns of potential
>criminality. i didn't claim proof, and don't now, but
>said there were very obvious concerns that led to
>obvious avenues of inquiry. i asked them whether it is
>reasonable to assume that experienced developers on a
>$2 million project with a fancy legal firm such as
>yours could have possibly failed to notice that they
>were repeatedly violating the single most prominent
>requirement of an R-4 district, namely the limit on
>the number of apartments. and even if it weren't
>difficult enough to believe innocence behind those
>failures, there's the matter of the fact that the
>developers and i spent more than an hour in my house
>one night discussing this very point, with both
>developers repeatedly and emphatically telling me how
>sure they were about what turned out to be the exact
>opposite of the truth on this question. and then there
>would be the question of what could have possibly
>prompted at least two experienced dcra officials (the
>head of the dcra has described them as such -- after
>first removing both from their positions as a result
>of this case) to have also made such a mistake on this
>point. i certainly cannot rule out innocent
>explanations for this amazing series of perhaps
>coincidental failures by experienced professionals to
>realize the most fundamental aspect of the applicable
>zoning law, but given all these facts, it's also not
>at all out of bounds to at least explore the full
>ramifications. i don't intend a criminal investigation
>as my main avenue of pursuit here, but the potential
>for it to branch out in that direction certainly
>occurs to me as a possibility given the facts known to
>date. as i've told your clients repeatedly, they could
>help resolve some of those questions by simply
>providing information on how many times in the past
>they have worked in an R-4 zone. perhaps they could
>show everyone who is concerned about this case that
>this was their first time in an R-4 zone, and that
>their claim of ignorance therefore looks possibly
>plausible. of course that would still leave another
>series of questions, but i won't hash all that out
>here.
> as for your attempt to now portray our joint
>negotiations of the past month as an attempt at
>extortion, i completely reject the notion and remind
>you that the whole idea of mediation/negotiations came
>at the suggestion of your clients. i made clear my

>concern about the size of this project right from the
>start, before a single shovel went into the ground,
>and my intention to ensure it meets all legal
>requirements. i contacted city officials then, before
>anything was built, to make clear i wanted careful
>monitoring of this project. and then, after it was
>built, i told your clients before they proposed
>mediation that i suspected that a full and complete
>inquiry into everything that had happened at the dcra
>involving this case could go as far as possible
>criminal activity. i did not focus that suspicion on
>any particular party. however, as it now stands, one
>of the key sticking points in our failure to reach an
>agreement was your demand that i abandon any kind of
>legal actions against both your clients and the city.
>perhaps you can explain why your side saw that as such
>a critical element to the agreement? was it just to
>protect the city? since i've been taking a large risk
>by postponing my legal options, my previous email was
>a final attempt to get clear on whether you were no
>longer interested in pursuing an agreement, and that
>those critical restraints were therefore released. if
>anyone is now making an attempt to cast those
>negotiations in a light of potential illegality, you
>might want to consider the notion of attempting to
>negotiate a financial settlement to avoid a potential
>criminal prosecution. i am not now making that
>allegation, and that wasn't my understanding of how
>negotiations were understood to work. but maybe now
>you're saying that you feel otherwise, and that you
>see hidden motives behind the negotiations? for my
>part, i only considered the negotiations an attempt to
>reach a rough approximation of a middle ground that
>would have spared me the hassle of administrative
>hearings and court dates while attempting to salvage
>some of the loss in value i feel our property has
>suffered, and that would have spared your client time
>in arriving at an eventual resolution and the very
>real possibility the city or a court will order the
>building torn down or substantially modified.
>   now, as for the bit about brian kass being the only
>route through which i can contact you, i'm sorry to
>inform you that you don't have the right to dictate my
>legal representation. if i choose to work with brian,
>and he chooses to work with me, that's a decision for
>the two of us to make, not you. i'm not sure that
>there's anything else to say, but as a matter of
>principle i remain open to any communication, and i've
>repeatedly provided your side with my telephone
>numbers and my email address, which i consider my
>preferred method of communication.
>   thanks, paul basken
>
>
>
>
>Start your day with Yahoo! - make it your home page
>http://www.yahoo.com/r/hs


08/24/2005