1638 Irving Street NW
Washington, DC 20010
26 September 2005

Board of Zoning Adjustment
District of Columbia Office of Zoning
441 4th Street NW
Suite 210 South
Washington, DC 20001

Re: Appeal No. 17411 / 1636 Irving St. NW
To the Board:

Thank you very much for the opportunity to appear before you last week. As you no doubt noticed, we are not accustomed to such appearances, and we did our best to conform to the standards and procedures we believe you expected.

We are writing this brief letter because your vice commissioner, near the conclusion of the hearing, asked a series of questions concerning the fact that we were told repeatedly during construction at 1636 Irving that DCRA would conduct a final inspection of the property immediately prior to issuing a certificate of occupancy, and that that would be the time at which any flaws, violations, non-conformities or other problems with the construction would need to be addressed and resolved.

Mr. Basken responded to those questions by noting that DCRA Zoning Administrator Toye Bello was among those city officials who provided those assurances, but was unable at the time to elaborate. Mr. Basken has now had a chance to check his records on such calls, and can confirm that he noted conversations with DCRA Zoning Administrator Toye Bello and other DCRA officials with whom he spoke on numerous occasions in the latter part of last year, obtaining specific assurances of DCRA oversight and inspection in this case. Mr. Basken's notes list a Nov. 10, 2004, conversation with Abdullah Barrow, and separate conversations during that period with other DCRA officials including Robert Chen and Edward Reeves. Among the topics discussed: the limit on the number of units, the illegality of the wall of windows built flush with Mr. Basken's property, and whether the large rear balconies counted toward the 60 percent lot coverage limit.

Mr. Basken clearly recalls making a routine of asking these officials to identify the time at which the DCRA itself would ensure compliance with such issues, and receiving regular assurances that the moment of verifying compliance with all construction-related matters would come as part of the final checks involved in issuing the certificate of occupancy. The certificate would not be issued, these officials promised, unless the project was in complete compliance with D.C. building codes,

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including those referenced in the building permit, as well as zoning regulations.

Mr. Meyer had similar conversations and written email exchanges with DCRA Director Canavan's chief of staff Theresa Lewis, Councilman Jim Graham and others. We can produce such email transcripts if requested by the Board.

The key factual question in the motion to dismiss is whether the appellants met the statutory 60-day filing deadline, and the Board clearly heard that the appellants did meet that deadline, and that both the BZA's own staff and counsel for the developers affirmed that to be the case. Even the Herron case, cited by the developers as a favorable precedent, found that the period for appeal is tied to the date of the item being appealed, and not the date of any written discussions of that item. All sides agreed that the certificate of occupancy was issued June 10, and the appeal was legally and properly filed on Aug. 5, with BZA staff reviewing and accepting it that day as legitimate and timely. No 60-day clock has yet started from the date when the developers activated their December permit, since they have not yet asked the city for the necessary R-4 exception.

The Board's chairman also asked questions regarding his concerns about the fairness of enforcing D.C. laws in this matter. In that regard, the Board has now heard that the developers were fully aware from the beginning of this project that the neighbors believed a condominium complex built in the space where a single-family-type structure existed was out of character for the neighborhood and possibly illegal, and that the neighbors intended to assert their full legal protections against such a project. Counsel for the developers freely admitted to the Board on Tuesday that the developers knew this from the start, and that the petitioners had repeatedly sought assurances from the developers that they would comply with the R-4 zoning laws.

The developers are simply unable to claim any surprise on that point, by their own testimony on Tuesday. They were not lured into a false sense of neighborhood contentment, either before or after their project was "under roof." They clearly told the Board the opposite. The developers also told the Board they never took any action to meet the main condition of their December permit, including the formal notification of neighbors that would have been required to obtain zoning approval for seven units. The appellants did not wait until late in the process to raise their concerns and file appropriate appeals. They filed their appeal at the first appropriate interval, since the DCRA issued the certificate of occupancy without having first ordered the building into compliance as Mr. Bello and other DCRA officials had promised.

Sincerely,

Paul Basken Joshua Meyer

Mr. Nero -

Please include the following two pages in our case file, number 17411

Thank you,
Paul Tuskan