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May 22, 2007

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VIA HAND DELIVERY

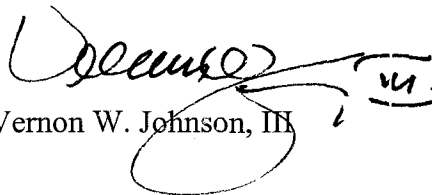
Board of Zoning Adjustment
for the District of Columbia
441 Fourth Street, N.W.
Room 210 South
Washington, D.C. 20001

Re: BZA Appeal No. 17615

Dear Members of the Board:

On behalf of Appellant William J. Harnett, we are hereby filing an original and twenty copies of the Appellant's Pre-Hearing Statement.

Sincerely,


Vernon W. Johnson, III

Enclosures as Stated

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17615

EXHIBIT NO. 16

Advisory Neighborhood Commission 2E

Representing the communities of Burleith, Georgetown and Hillandale

3265 S Street, NW • Washington, DC 20007

(202) 338-7427 • FAX (202) 338-0279 • anc2e@erols.com

October 6, 2006

Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 Fourth Street, NW, Suite 200
Washington, DC 20001

RE: BZA Appeal No. 17517, Washington Harbour Condominium Units Owners Assn.

Dear Mr. Chairman and Members of the Board:

On October 3, 2006 ANC 2E held its regularly scheduled public meeting which was duly noticed and attended by all seven commissioners, constituting a quorum. The above-referenced BZA application was on the agenda. After discussion in which representatives for both the Washington Harbour Condominium Units Owners Association and the petitioner were present, ANC 2E, by a vote of six to one, passed the following motion as presented by Commissioner Starrels:

ANC 2E supports the petitioner, William Harnett and therefore, we recommend to the Board of Zoning Adjustment that the Washington Harbour Condominium Units Owners Association's appeal be **denied**.

We trust that great weight will be given to ANC 2E and that this motion will be part of the record for the BZA hearing scheduled for October 24, 2006.

Sincerely,



Ed Solomon
Chair, ANC 2E

COMMISSIONERS:

Ed Solomon, District 1 John Lever, District 2 Bill Skelsey, District 3 Brett Clements, District 4
Bill Starrels, District 5 Gunnar Halley, District 6 Charles Eason, District 7

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BZA Appeal No. 17615
ANC 2E
Public Hearing: June 5, 2007

Acting without any building permit, WHCA simply carried out repainting and restriping in the garage and did what it wanted in 2004.

In fact, because WHCA did not even seek a building permit prior to taking these actions, it was previously issued a notice of violation for failure to comply with applicable Zoning Regulations. WHCA was able to avoid immediate adverse action by applying for and obtaining the Permit on November 17, 2006.

In doing so, however, WHCA made clear misrepresentations on the application for the Permit in an attempt to conceal the real nature of the work that had already been completed. Additionally, WHCA misstated the facts to avoid raising any issues under the Zoning Regulations, when, in fact, and as WHCA well knew, the work did not conform to the requirements of the Zoning Regulations.

The Permit allowed WHCA to conduct “alteration and repair” work described as “striping of five (5) new parking spaces in owner’s parking garage identified in yellow as spaces P1-P5 on the attached plans.” Despite WHCA’s representations in its application that the work is to begin “ASAP” and that “Completion Date of Work” would be “1 week after start,” WHCA had completed the work some two years prior to the application, for a cost far in excess of the disclosed in the application, and without any oversight or approval by the District. As far as Mr. Harnett has been able to learn, WHCA did not include with the application a set of plans depicting the work. WHCA also omitted any reference to the fact that ANC 2E issued a recommendation that the “work” described in the application should not be permitted.

WHCA’s misrepresentations and omissions are part and parcel of an on-going scheme by some members of the Board of Directors of WHCA to obtain parking spaces without proper oversight or taxation by the District of Columbia, to say nothing of authorization from the

membership of WHCA. These issues have never been submitted to or approved by the Condominium Owners within WHCA. Nor has WHCA followed proper procedures for pursuing this action in the legally required and appropriate manner.

Indeed, the newly created parking spaces are in areas of the residential parking garage where the District denied WHCA permission to place parking spaces when the Complex was constructed in the mid-1980's. The result of WHCA's actions is the creation of parking spaces that clearly do not comply with the letter or spirit of the applicable Zoning Regulations and laws. By way of just one example among many, even WHCA has *admitted* on several occasions that the new parking aisle it created with the addition of the new parking spaces is less than the twenty (20) feet required.

Unfortunately, the District of Columbia is not the only victim of WHCA's scheme. The creation of new parking spaces directly behind Mr. Harnett's parking space has precluded him from moving his car for more than two years.

If permitted, WHCA's actions will be understood as a license for similar entities to "create" so-called "new" parking spaces whenever and wherever they want, without review by any District Government agency, without regard for any of the applicable municipal regulations and other laws governing parking, without regard for the Zoning Regulations, without regard for public safety, and without regard for the opposition of a majority of the Unit Owners. Moreover, if allowed to stand, future applicants will be given the incentive to complete work prior to seeking a permit, comfortable in the assumption that merely stating that the work will be accomplished "ASAP" will preclude any factual inquiry. Municipal rules and regulations exist for a reason and compliance is not optional. Mr. Harnett simply requests that those laws and regulations be interpreted as written so that he may again use his parking space.

Mr. Harnett maintains that the Permit countenances five “new” parking spaces that are inconsistent with the following regulations:

- 11 D.C.M.R. § 2117.5 (required parking aisle width);
- 11 D.C.M.R. § 2115.5 (required vertical clearance);
- 11 D.C.M.R. § 2117.7 (pedestrian walkway protections); and
- 11 D.C.M.R. § 2116.8 (requirement for reasonable and convenient parking facilities).

Mr. Harnett further submits that the BZA possesses independent authority to remedy the unsafe conditions caused by the creation of the five new parking spaces under 11 D.C.M.R. § 2116.9, which provides that the BZA has the authority to impose additional conditions as necessary.

III. Factual Background

When Washington Harbour was built in the mid-1980’s, WHCA applied for and received a permit to construct a parking garage containing 48 spaces. Although WHCA sought to include more than the 48 spaces in the parking garage, including some of the spaces that are the subject of this appeal, that was not permitted for various access and safety reasons. Nevertheless, in 2004, without approval of the Condominium ownership and contrary to a petition by the majority of unit owners, WHCA sold license rights to five “new” parking spaces. The sale was the subject of an “auction” with irregular procedural rules designed to ensure particular individuals were the “winners.” Not surprisingly, these “winners” largely consisted of members of the same Board of Directors that authorized the auction in the first instance.

Significantly, in August 2004, as part of the auction materials that were distributed to the units owners of Washington Harbour, WHCA included a drawing depicting a new parking aisle resulting from the creation of the new parking spaces that was, by its own admission, seventeen

(17) feet wide, some three feet short of the required twenty (20) feet. A copy of the materials prepared and distributed by WHCA is attached as Exhibit 2. The figure of seventeen feet would be the first of a series of ever-changing positions by WHCA as to the actual width of the parking aisle it created, perhaps explaining why WHCA apparently did not provide any plans or specifications for the work that is the subject of the Permit.

In connection with the “auction” on September 26, 2004, WHCA “created” the five new parking spaces by painting over a pedestrian walkway and storage/utility areas of the residential parking garage with stripes for new parking spaces. WHCA also installed a new sign directing pedestrians through a narrow parking space rather than the prior pedestrian walkway. Importantly, WHCA did not obtain, nor seek, a building permit for any of this work. Further, despite the representation in WHCA’s application for the Permit that it (would) merely cost \$200, the work actually cost WHCA \$2,650 (some thirteen times the amount set forth in WHCA’s application). WHCA knew this prior to filing its application because it had already paid for the work in September of 2004. A true and accurate copy of that invoice, marked by WHCA as “paid,” is attached hereto as Exhibit 3.

Mr. Harnett is the owner of a residential condominium unit designated as “PH-206” at Washington Harbour, along with the parking unit designated as “P-112.” His interests are directly and negatively impacted by WHCA’s actions, as now countenanced years after the fact through the issuance of the Permit. Mr. Harnett’s hardships evidence the practical importance applicable regulations in this case.

Exhibit 4 hereto depicts the relevant portion of the parking garage and the location of the “new,” illegally created parking spaces. This is the same diagram that was presented to ANC 2E and considered and relied upon by ANC 2E when, as noted below, it decided to support Mr.

Harnett when in considered these issues. “New” parking spaces P-2 and P-3 are directly behind Mr. Harnett’s parking spot and, when either is used, completely impede the use of Mr. Harnett’s parking space. There is only approximately sixteen (16) feet, ten (10) inches between parking space P-112 and new parking space P-2, more than three feet less than is required. WHCA itself has prepared diagrams showing a vehicle diagonally stuck in the area between parking space P-112 and parking spaces P-2 and P-3 – the vehicle, in fact, is shown hitting the wall as it tries to enter parking space P-112 – the very same predicament faced by Mr. Harnett. (Exhibit 5 hereto.) (Exhibit 5, a prior submission by WHCA to the BZA on these issues, claims erroneously that there is 19 feet, five inches between P-112 and P-2, which is clearly an overstatement that does not comply with applicable regulations, even if it were true – which it is not. In a subsequent submission, WHCA added an inch and claimed that the aisle is 19 feet, six inches—which still does not comply. Suffice it to say, WHCA’s measurements of the aisle width changes frequently and without any apparent effort to reconcile such measurements.) The photographs attached hereto as Exhibit 6 further illustrate the newly created parking aisle and its proximity to Mr. Harnett’s parking space. They also show that the issues are exacerbated by the lack of any “wheel stop” or end line on the “new” spaces.

As was described to ANC 2E prior to its consideration of these issues, Mr. Harnett has been unable to move his car for over a two years when parking spaces P-2 or P-3 are occupied. The precise aisle width can vary, depending upon where the vehicles parked in spaces P-2 or P-3 decide to stop their vehicles. (Exhibit 6 hereto.) If they pull further forward, the aisle width can be even less than 16 feet 10 inches. There is no end line showing where spaces P-2 and P-3 are supposed to stop, nor is there any “wheel stop” or other device to create a barrier at the end of the spaces.

Parking spaces P-2 and P-3 wholly lack required “wheel stops” for pedestrian safety and are incompletely striped so as to not fully delineate the area in which a vehicle should be parked. There are stripes painted on the sides along parking spaces P-2 and P-3, but no lines at either end to show where parking spaces P-2 and P-3 are supposed to begin and end so as to prevent encroachment in the parking aisle and pedestrian access points. No matter where one chooses to measure the end line of parking spaces P-2 and P-3, the aisle width does not meet the minimum requirements.

Before WHCA took the action that is the subject of the Permit, Parking spaces P-2 and P-3 were striped as no-parking so as to permit pedestrian access to WHCA’s residential elevators. As a result of the “new” spaces, pedestrians seeking to access the elevator must walk through narrow parking spaces in close proximity to vehicles. WHCA also placed a sign on the wall adjacent to P-116 (which Mr. Harnett also owns) without obtaining the required permit, directing pedestrian traffic to the “Residential Elevators” by an arrow pointing them *through* P-116.

“New” parking spaces P-1, P-4, and P-5 are no less hazardous. Those parking spaces are irregular shaped (with vertical junction boxes slanting down from the ceiling with access of less than six feet) and exceedingly narrow. Given their proximity to the entrance door for that portion of the garage, the angles of egress and ingress do not conform to the minimum distance required. Perhaps most importantly, however, these spaces are in an area of the garage in which electrical, gas, and water utility piping hang down from the ceiling. This proximity to unprotected utilities was one of the reasons that the District of Columbia refused to permit the use of these areas as parking spaces when the Condominium was first constructed. Indeed, the original proposed plat for the garage submitted to the District included 50 spaces. The District later limited its approval to 48 parking spaces due to safety concerns related to the utility piping.

The previous denial of these spaces may help to explain why WHCA delayed for years in seeking the Permit or submitting its plans for administrative review.

IV. Procedural History and ANC 2E's Recommendation In Favor Of Mr. Harnett's Position

On or about January 4, 2005, DCRA issued a Notice of Violation and Notice to Abate ("Notice of Violation," attached as Exhibit 7) to WHCA regarding the work that is the subject of the Permit. The Notice of Violation cited WHCA for its failure to obtain a building permit and to abide by applicable Zoning Regulations. WHCA appealed Notice of Violation to the BZA regarding the zoning violations and to the Office of Administrative Hearings with regard to the lack of a building permit. While WHCA's appeals were pending, the Zoning Administrator that issued the Notice of Violation decided not to pursue the matter before the BZA (to which Mr. Harnett was not a party), apparently believing that WHCA's conduct would be adjudicated before the Office of Administrative Hearings (in a proceeding to which Mr. Harnett was not a party). When WHCA belatedly applied for and obtained a building permit, the Office of Administrative Hearings dismissed that portion of the appeal that pertained to WHCA's prior failure to obtain a building permit.

While WHCA's prior appeal of the zoning portion of the Notice of Violation was still pending, ANC 2E members heard presentations by counsel both for WHCA and Mr. Harnett. The members of ANC 2E were given depictions of the parking garage and the "new" parking spaces. Counsel for WHCA specifically addressed questions from ANC members regarding the issues set forth herein and stated the legal basis for its appeal by arguing that a permit was not required and that the spaces implicated were not "required" spaces under applicable regulations. Counsel for WHCA was in no way limited in his presentation or responses to questioning from the members. After carefully considering the issues and the presentations made by counsel, as

expressed in a letter dated October 6, 2006 (Exhibit 8 hereto), ANC 2E fully supported fully Mr. Harnett's position. As Mr. Harnett understands it, ANC 2E has decided not to revisit these issues or to appear at the hearing to recapitulate its position – the October 6, 2006 letter stands as ANC 2E's position on the issues involved in this appeal.

None of this procedural history was disclosed or mentioned in WHCA's application for the Permit. Significantly, ANC 2E's consideration of the zoning issues set forth herein was also not included in the application, denying DCRA the opportunity to give ANC 2E's recommendation the great weight it deserves.

V. Argument

Although the Permit on its face contains the express Conditions/Restrictions that: "All Construction Done According to the Current Building Codes; All Construction Done According to the Current Zoning Regulations," the work that is the subject of the Permit was completed years ago and does not conform to the applicable laws and regulations, then or now. The effects of WHCA's noncompliance implicate not only Mr. Harnett's right of safe ingress and egress from his parking space, but also that of pedestrian and unit owner safety more generally. WHCA's misrepresentations in its application for the Permit as to the start date for the work (it said "ASAP," but the work was done in September 2004), completion date (it said "1 week after start," but the work was done in September 2004), and cost of work (it said "\$200," but the work cost at least \$2,650 when it was actually done and paid for), as well as WHCA's multiple inconsistent "measurements" of the parking aisle, evidence both WHCA's noncompliance and the need for heightened scrutiny of any factual claims made by WHCA's to the BZA.

WHCA should not be permitted to accomplish by a building permit what it clearly could not accomplish through the proper zoning administration process. The parking spaces created by

WHCA, without any oversight by the District, do not comply with applicable Zoning Regulations related to safe and adequate parking. Parking spaces are a valuable commodity in the District. If WHCA's actions are countenanced, condominium associations throughout the city could create so-called "new" parking spaces where they deem fit, regardless of applicable Zoning Regulations.

A. The "New" Parking Spaces Violate Aisle Width Requirements

11 D.C.M.R. § 2117.5 provides:

Except as provided in §§ 2115.9 through 2115.18 and 2117.6, when required parking spaces are so arranged that an aisle is required for accessibility or maneuvering space between rows of two (2) or more parking spaces, or between a row of two (2) or more parking spaces and the perimeter of the area devoted to parking spaces, the aisle shall have a clear width of not less than twenty feet (20 ft.) or ninety degree (90 (degrees)) angle parking, and not less than seventeen feet (17 ft.) for angle parking that is sixty degrees (60 (degrees)) or less as measured from the center line of the aisle.

The parking aisle between Mr. Harnett's space (P-112) and newly created spaces P-2 and P-3 clearly does not comply with the requirements of Section 2117.5. The parking angle width does not meet the requirements for a ninety degree parking angle (or sixty-degree angle).

WHCA does not contest this point. As noted above, WHCA's own prior submissions to the BZA erroneously depict the distance between space P-112 and the newly created spaces as nineteen (19) feet, five (5) inches. At other times, WHCA has stated other measurements. Nevertheless, all of WHCA's various statements on the issue have conceded an aisle width that is less than the required twenty (20) feet. (It should also be noted that WHCA's various measurements are erroneous – given that there is only 16 feet, 10 inches between the spaces – and are a byproduct of the fact that WHCA intentionally did not paint or create an ending point or barrier for new parking spaces P-2 and P-3 so as to permit more favorable measurements.)

Rather than claim compliance, in prior submissions, WHCA asserted erroneously that Section 2117.5 does not apply. More specifically, WHCA claims that Section 2117.5 only applies to “required” spaces and that no “required” spaces are implicated by the newly created parking spaces. However, that myopic reading of the regulations only highlights WHCA’s noncompliance. Section 2115.14 provides “[w]here aisles are provided, the aisles shall meet the design requirements stipulated in § § 2117.5 and 2117.6.” Section 2115.14, and thus Section 2117.5 by reference, is not limited to “required” parking spaces, but is applicable more generally. That broader applicability is consistent with the Zoning Regulations, because if an entity is permitted to create nonconforming parking aisles, the regulatory protection for other “required” spaces will be rendered a nullity.

In this case, the new parking spaces clearly create a parking aisle between existing spaces #111 and #112 on the one side and newly created spaces P-2 and P-3 on the other. As such, the aisle must comply with the requirements of Section 2117.5, which it plainly does not. Indeed, the fact that the new parking aisle does not comply has been demonstrated by WHCA’s own submissions. Even though each new submission brings a new measurement by WHCA, each measurement is less than the twenty feet required.

It should also be noted that Mr. Harnett’s parking space, #112, is a required parking space. Mr. Harnett was one of the first individuals to purchase a parking space, and space 112 is one of the originally designated, approved, and platted spaces at Washington Harbour. There is no regulatory procedure that was followed by WHCA in selecting what it now says should be characterized as “required,” other than its own self-interest. Allowing WHCA, or other similarly situated entities to manipulate the facts in this manner by playing musical chairs with what it deems a “required” space would mean that such entities can choose at its whim to label parking

spaces as “required” or as “not required,” thereby maneuvering around the applicable legal requirements. Indeed, under WHCA’s interpretation, similarly situated entities can select some spaces as required for one permit and select other parking spaces for a different permit, an illogical result clearly never intended.

B. Newly Created Parking Spaces Violate Vertical Clearance Requirements

11 D.C.M.R. § 2115.5 provides that “all parking spaces shall have a minimum vertical clearance of six feet, six inches (6 ft., 6 in.).” New spaces P-1, P-4, and P-5 do not comply with Section 2115.5. Each space contains utility piping hanging down at a slant so as to limit vertical clearance to less than six feet, six inches. Section 2115.5 does not permit a parking space that only partially complies with vertical clearance of at least six feet, six inches. The entire space must comply.

Compliance in this case is particularly important because there are additional pipes and electrical utility piping which hang from the ceiling of these new spaces. It is imperative for the safety of the residents and the general public that the minimal clearances in this instance comply with Section 2115.5. Obviously, vehicles using these spaces would be dangerously close to electrical, plumbing, gas, and other areas that District law dictates should be given a wider berth. No doubt these concerns lead to the District’s denial of parking spaces in the locations of P-1, P-4, and P-5 when the building was first built in the 1980’s.

C. New Parking Spaces Violate Requirement of Reasonable and Convenient Parking Facilities

11 D.C.M.R. § 2116.8 provides that “accessory parking spaces shall be located so as to furnish reasonable and convenient parking facilities for the occupants or guests of the building or structures they are designed to serve.” The parking spaces in this instance, such as new spaces P-2 and P-3, do not comply with Section 2116.8. New spaces 2 and 3 impede Mr. Harnett’s

ingress and egress to his parking spot, P-112. Mr. Harnett has literally been unable to remove his car for more than two years when spaces P-2 and/or P-3 are occupied.

D. New Parking Spaces Impermissibly Permit Vehicular Encroachment on Pedestrian Right-of-Ways

11 D.C.M.R. § 2117.7 provides:

The public rights-of-way as well as private walkways and driveways shall be protected from vehicular encroachment from all parking spaces by wheel bumper guards, curbs, guard rails, or screening between the property line and the perimeter of the parking area. Parking shall be designed so that no vehicle or any part thereof shall project over any lot line or building line.

It is undisputed that new parking spaces 2 and 3 were previously a pedestrian walkway. In fact, that area was previously painted with diagonal striped lines designating it as no-parking because it was used to access the Residential Elevators in the parking garage. The new parking spaces do not have “wheel bumper guards” or “wheel stops” and are not painted so as to delineate the beginning and end of the parking spots (and thus permitting WHCA’s creative measurements, noted above). Put more simply, there is no painted line depicting where a car using spaces P-2 and P-3 must stop in order to protect rights-of-way from vehicular encroachment. This lack of pedestrian protection is no accident, as it helps facilitate WHCA’s creative and ever-changing measurements of the parking aisle. In addition, WHCA has directed pedestrian traffic *through* parking space 116, by placing a sign (without proper authority) directing pedestrians to the “Residential Elevators,” further evidencing the encroachment of the prior pedestrian walkway.

E. New Parking Spaces Impermissibly Permit Vehicular Encroachment on Pedestrian Right-of-Ways

11 D.C.M.R. § 2116.9 provides that:

The Board may impose conditions on any accessory or non-accessory parking spaces as to screening, coping, setbacks, fences, the location of entrances and exits, or any other requirement it deems necessary to protect adjacent or nearby property. It may also impose other conditions it deems necessary to assure the continued provision and maintenance of the spaces.

The BZA is empowered to impose any condition it deems necessary for the continued provision and maintenance of parking spaces. In this case, Mr. Harnett's property rights are impaired by the newly created spaces. Further, some of the newly created spaces are the very ones that the District of Columbia has previously refused. If unconvinced that the previous provisions are applicable, Mr. Harnett respectfully requests that Section 2116.9 be invoked to protect his property and the safety of the residents.

F. ANC 2E's Consideration Must Be Given Great Weight

On October 3, 2006, Advisory Neighborhood Committee (ANC) 2E considered these issues and decided to support Mr. Harnett. The members of ANC 2E were given the depictions of the parking garage attached hereto and carefully considered the zoning issues presented in this appeal. ANC 2E's recommendation is entitled to great weight. Mr. Harnett does not believe that DCRA considered ANC 2E's position or afforded it the great weight to which it is entitled, no doubt because WHCA did not disclose its existence as part of its application for the Permit. The requirements of D.C. Code § 1-309.10 are quite explicit and require that the Commission's recommendation be given great weight, including a written explanation stating "with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances." See D.C. Code § 1-309.10(d)(3)(B) (which further requires a

statement of “specific findings and conclusions with respect to each issue and concern raised by the Commission” and specific support for the position ultimately taken).

G. WHCA’s Submissions Are Entitled To No Weight

Having made material misrepresentations as part of its application for the Permit and asserted inconsistent representations as to the actual measurements of the residential parking garage at Washington Harbour, WHCA’s submissions should be afforded no weight in this proceeding. Even if WHCA were to request and obtain party status, any other result encourages material misstatements and omissions in applications process.

VI. Anticipated Witnesses

Mr. William J. Harnett

Mr. Harnett will offer testimony regarding the historical background of the parking garage and his acquisition of parking unit P-1122, the parking auction, the hazards of the new parking spaces, his measurements of the parking aisle, and WHCA’s stubborn refusal to address concerns related to the impaired egress and ingress of his parking space, as well as other safety issues addressed herein and the factual background of this appeal.

Mr. Michael P. Albers

Mr. Albers will testify as an expert witness on the following matters.

1. Introduction and review of past experience and expertise
2. Dimensions necessary to access parking spaces in a reasonable manner
 - a. Parking aisle width
 - b. Parking space width
 - c. Clearances
 - d. Turning radii

3. Situation at Washington Harbor Condominium Association garage at 3030 K Street, NW, with respect to space # 112 and spaces #2 and 3.

Ms. Ellen McCarthy

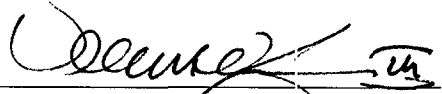
Ms. McCarthy will testify as an expert witness on the following matters.

1. Zoning standards for parking
 - a. Aisle width
 - b. Vertical clearance
 - c. Other standards
2. What is provided in this case
3. "Required" vs. other spaces

VII. Conclusion

For the foregoing reasons, and such other and further reasons as may be asserted at hearing on this matter, as well as such other and further reasons as may be based on the documents and information thus far not made available by DCRA and/or WHCA concerning the Permit, Mr. Harnett respectfully requests that the Permit be rescinded and nullified, and for such other and further relief as may be appropriate in the circumstances.

Respectfully Submitted,


Vernon W. Johnson, III
Nixon Peabody LLP
401 Ninth Street, N.W.
Suite 900
Washington, D.C. 20004-2128
(202) 585-8401

Counsel for Appellant William J. Harnett

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of May, 2007, I caused to be mailed, via first class mail, postage prepaid, a copy of this Appellant's Pre-Hearing Statement, with appended Exhibits 1-8, to the following:

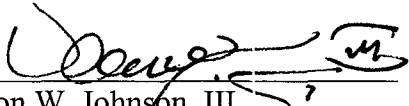
Bill Crews
Zoning Administrator
District of Columbia
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.W.
Suite 2000
Washington, D.C. 20002

Jill Stern, Esq.
District of Columbia
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.W.
Room 9401
Washington, D.C. 20002

Ed Solomon, Chair
Advisory Neighborhood Commission 2E
3265 S Street, N.W.
Washington, D.C. 20007

Washington Harbour Condominium Unit Owners Association
c/o Emily J. Vaias, Esq., Counsel
Linowes and Blocher LLP
7200 Wisconsin Avenue
Suite 800
Bethesda, MD 20814

Robert Pence, Cathi Bostic, Peter Bernad, and Lynne Wasserman
c/o Raymond B. Via, Esq., Counsel
Linowes and Blocher LLP
7200 Wisconsin Avenue
Suite 800
Bethesda, MD 20814


Vernon W. Johnson, III

Department of Consumer and Regulatory Affairs

Building and Land Regulation Administration

941 North Capitol Street N.E. Room 2100

Washington D.C. 20002

Tel:(202) 442-4470

Fax:(202) 442-4862

B

Building Permit

THIS PERMIT IS VALID ONLY FOR THE PREMISES
OF THE PROJECT ADDRESS

PERMIT NO. 101019

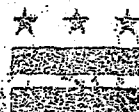
DATE: 11/17/2006

ADDRESS OF PROJECT: 3030 K ST NW		SSL: SQ: 1173 WARD: 2 ZONE R-1-B	LOT: 102
DESCRIPTION OF WORK: STRIPING OF FIVE (5) NEW PARKING SPACES IN OWNER'S PARKING GARAGE IDENTIFIED IN YELLOW AS SPACES P1 - P5 ON THE ATTACHED PLANS			
PERMIT TYPE: ALTERATION AND REPAIR	PLANS (Y/N): Y	EXISTING USE: RESIDENTIAL APARTMENT	PROPOSED USE: Residential Apartment
PERMISSION IS HEREBY GRANTED TO OWNER: WASHINGTON HARBOUR UNIT OWNERS		PERMIT FEE: \$33.00	
AGENT NAME: JOE LAPAN 301-961-5172			
CONDITIONS / RESTRICTIONS: ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT BUILDING CODES; ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT ZONING REGULATIONS;			
TO REPORT WASTE, FRAUD OR ABUSE BY ANY D.C. GOVERNMENT OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639:			
DIRECTOR: <i>Patrick Canavan, Psy. D.</i> Dr. Patrick Canavan, Psy. D.		PERMIT CLERK: <i>[Signature]</i>	EXPIRATION DATE: 11/17/2007

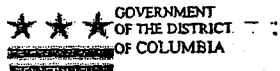
CONDITIONS: As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all the work authorized by this permit and to require any change in construction which may be necessary to insure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under the Permit must start within one (1) year of the date appearing on this permit or this permit is automatically void. If work is not started, any application for partial refund must be made within six months of the date appearing on this permit.

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT ADDRESS OF WORK UNTIL WORK IS COMPLETED.
NOTIFY THE BUILDING INSPECTOR THE DAY THE WORK STARTS. PHONE: (202)442-4641 941 NORTH CAPITOL ST NE WASHINGTON DC 20002.

A separate permit is required for all Plumbing, Refrigeration, Gas Fitting, and Electrical Work.



PRE-FILE NUMBERS		ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER	
N.C.P.C. No:	O.G. No:			101019	By:
H.P.A. No:	S.L. No:	Ward No: 2	Receipt No:	Date:	Receipt No:



DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION PERMIT SERVICE CENTER
Tel 202-442-4589 Fax 202-442-4862

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY
(PRINT IN INK OR TYPE, DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

#028

BLRA-33
(Rev. 2/04)

CLEARANCE TO FILE	ERASING, CROSSING OUT, WHITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION
By _____ Date _____	

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

1 Address of Proposed Work: 3030 K Street, N.W.		Suite No.	2 Lot 102	3 Square 1173	4 Application Date 11/17/06
5 Owner of Building or Property Washington Harbour Unit Owners Association, Inc.		6 Address (include Zip Code) 3030 K St., N.W. Washington, D.C. 20007		7 Phone 202.944.4232	
8 Agent for Owner: (if applicable) N/A We Lapar		9 Address (include Zip Code) 7100 WASHINGTON AVE, Suite 800 Bethesda, MD 20814		10. Phone 301.961.5172	
11. Type of Proposed Work (check all applicable boxes)					
☐ New Building ☐ Retaining Wall ☐ Garage ☐ Addition ☐ Fence ☐ Sign ☒ Alteration and Repair ☐ Shed ☐ Projection ☐ Raze Building ☐ Awning ☐ Other (Specify) _____					
12. Description of Proposed Work Striping of five (5) new parking spaces in Owner's parking garage identified in yellow as spaces P-1, P-2, P-3, P-4 and P-5 on the attached Plan.					
13 Existing Use(s) of Building or Property Residential		14 Ex. No of Stories of Bldg 4	15 Ex No of Dwelling Units 35	Official Use Only Miscellaneous FEE \$ 33.00	
16 Proposed Use(s) of Building or Property Residential		17 Prop No of Stories of Bldg 4	18 Prop. No of Dwelling Units 35	By: TET Date: 11/17/06	
19 Starting Date ASAP	20 Completion Date of work 1 week after start	21 Method of Removing Construction Debris ☒ Pick-up Truck ☐ Dumpster ☐ Other (specify)		22 Does the proposed work involve disturbing the earth or razing a building? ☐ Yes, answer q. 23 ☒ No, SKIP q. 23-27	
23. Is the area of disturbed earth more than 50 sq. ft? ☐ Yes, answer q. 24-25 ☐ No, SKIP q. 24-25	24. Soil Erosion Control Methods	25. Area of Offsite Drainage sq. ft	26. No of Footings or Columns	27 Size of Footings or Columns	

ALWAYS SIGN THE APPLICATION ON PAGE 3 (SECTION I)

Complete Section B if the proposed work is new building, addition or alteration. (Page 2)
Complete Section C if the proposed work is razing a building. (Page 2)
Complete Section D if the proposed work is a retaining wall. (Page 2)
Complete Section E if the proposed work is a fence. (Page 3)
Complete Section F if the proposed work is a shed/garage. (Page 3)
Complete Section G if the proposed work is an awning. (Page 3)
Complete Section H if the proposed work is a sign. (Page 3)

OFFICIAL USE ONLY					
	R	P	H	A	
M					
P					
E					W ☐ Yes ☐ No
F					PLANS
S					☐ No ☐ Sm ☐ Lg

(B) NEW BUILDING, ADDITION, & ALTERATION (COMPLETE ITEMS 28 THRU 60)

28. Architect's Name: N/A		29. D.C. Lic. No.:		30. Architect's Address: (include Zip Code)		31. Phone:																	
32. Engineer's Name: N/A		33. D.C. Lic. No.:		34. Engineer's Address: (include Zip Code)		35. Phone:																	
36. Building Contractor's Name: N/A		36A. D.C. Lic. No.		37. Contractor's Address		38. Phone:																	
39. Type of Construction ☐ Masonry ☐ Steel ☐ Wood ☒ Other ☐ Concrete N/A		40. Fire Suppression: ☐ Fully Sprinklered ☐ Standpipe System ☐ Partially Sprinklered ☒ None ☐ Other		41. Booster Pump ☐ New ☐ Existing ☒ None		42. Total Lot Area No change sq. ft.																	
44. Present Gross Floor Area of Bldg. no change sq. ft.		45. Proposed Gross Floor Area of Bldg. no change sq. ft.		46. Floors involved in this permit ☐ All ☒ Floors parking garage		43. Breakdown of Lot Area (= 100%) no change a. building % b. paved area % c. greenery %																	
48. Number and type of projection:		49. Distance of projection:		50. Width of projection:		51. Width of building frontage ft. 52. Signature of Owner (projection only):																	
53. Water or Sewer Excavation? ☐ Yes ☒ No		54. Driveway Construction? ☐ Yes ☒ No		55. Sheeting/Shoring Necessary? ☐ Yes ☒ No		56. Elevators Involved? ☐ Yes, answer q. 57 ☒ No																	
57. No and type of elevator		58. Plans Certified by Engineer? ☐ Yes, cert. attached ☒ No																					
59. Estimated Cost of Work (a) New/Add.: \$ (b) Alt/Repair \$ 200.00 Total \$		<table border="1"> <thead> <tr> <th colspan="4">OFFICIAL USE ONLY</th> </tr> <tr> <th>Alter/Repair FEE</th> <th>New Const. FEE</th> <th>Filing Fee</th> <th>TOTAL PERMIT FEE</th> </tr> </thead> <tbody> <tr> <td>\$</td> <td>\$</td> <td>\$</td> <td>\$</td> </tr> <tr> <td>By:</td> <td>Date:</td> <td>By:</td> <td>Date:</td> </tr> </tbody> </table>						OFFICIAL USE ONLY				Alter/Repair FEE	New Const. FEE	Filing Fee	TOTAL PERMIT FEE	\$	\$	\$	\$	By:	Date:	By:	Date:
OFFICIAL USE ONLY																							
Alter/Repair FEE	New Const. FEE	Filing Fee	TOTAL PERMIT FEE																				
\$	\$	\$	\$																				
By:	Date:	By:	Date:																				
60. Volume of New Bldg. or Addition cubic ft.																							

(C) RAZING A BUILDING (COMPLETE ITEMS 61 THRU 83)

61. Raze Contractor's Name:		62. Contractor's Address: (include Zip Code)		63. Phone:										
64. Insurance Company		65. Policy or Cert. Number		66. Expiration Date										
67. Raze Method														
68. Building Material	69. Raze Entire Building? ☐ Yes ☐ No	70. Building Condemned? ☐ Yes ☐ No	70A. Building Vacant? ☐ Yes ☐ No	71. Public Space Vault? ☐ Yes ☐ No	72. Disconnect Water and/or Sewer? ☐ Yes ☐ No									
73. Size of Water Connection in.														
74. Plumber's Name:		75. D.C. Lic. No.	76. Length ft.	77. Width ft.	78. Height ft.									
79. Volume ft.		80. Party Wall? ☐ Yes ☐ No												
81. Asbestos in the Building? ☐ No ☐ Yes, location		82. Raze Contractor Signature		<table border="1"> <thead> <tr> <th colspan="3">OFFICIAL USE ONLY</th> </tr> <tr> <th>FEE</th> <th>By:</th> <th>Date:</th> </tr> </thead> <tbody> <tr> <td>\$</td> <td></td> <td></td> </tr> </tbody> </table>		OFFICIAL USE ONLY			FEE	By:	Date:	\$		
OFFICIAL USE ONLY														
FEE	By:	Date:												
\$														
83. Owner's Signature														

(D) RETAINING WALL (COMPLETE ITEMS 84 THRU 93)

The retaining wall will not obstruct any accessible parking required by D.C. Zoning Regulations

84. Cost of Work \$	85. Material:	86. Height	87. Color	88. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land *
---------------------	---------------	------------	-----------	---

* If party wall, the owner of the adjoining property must agree to the erection of the retaining wall and this application

89. Signature of Adjoining Owner:		90. Phone: Home Work		<table border="1"> <thead> <tr> <th colspan="3">OFFICIAL USE ONLY</th> </tr> <tr> <th>FEE</th> <th>By:</th> <th>Date:</th> </tr> </thead> <tbody> <tr> <td>\$</td> <td></td> <td></td> </tr> </tbody> </table>		OFFICIAL USE ONLY			FEE	By:	Date:	\$		
OFFICIAL USE ONLY														
FEE	By:	Date:												
\$														
91. Address of Adjoining Owner:		92. Lot:	93. Square:											

(F) FENCE (COMPLETE ITEMS 94 THRU 102) (The fence will not obstruct any accessible path line required by D.C. Zoning Regulation)

94. Material and type:	95. Height ft.	96. Color:	97. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land *
------------------------	-------------------	------------	---

* If party fence, the owner of the adjoining property must agree to the erection of the fence and this application

98. Signature of Adjoining Owner:	99. Phone: Work Home	OFFICIAL USE ONLY	
	101. Lot	102. Square	FEE
100. Address of Adjoining Owner:		By:	Date:

(G) SHED OR GARAGE (COMPLETE ITEMS 103 THRU 113)

103. Number	104. Length ft.	105. Width ft.	106. Area sq. ft.	107. Height ft.	108. Volume cu. ft.	109. Est. Cost of Work \$	OFFICIAL USE ONLY
110. Material of Roof	111. Material of Sides	112. Wall Thickness: ☐ External () inches ☐ Party () inches		113. Color		\$	FEE
						By:	Date:

(G) AWNING (COMPLETE ITEMS 114 THRU 123)

114. Number:	115. Color	116. Type: ☐ Folding ☐ Fixed	117. Projections: Beyond bldg. line _____ in. Beyond pt of attachm _____ in	118. Height of Lowest Part of awning	OFFICIAL USE ONLY	
119. Material of Frame	120. Material of Covering	121. Lettering on awning? ☐ Yes ☐ No	122. Fixed Posts? ☐ Yes ☐ No	123. Over Side- walk café? ☐ Yes ☐ No	\$	
					By:	Date:

(H) SIGN (COMPLETE ITEMS 124 THRU 144)

124. Number	125. Electric Signs? ☐ Yes, answer q. 126-132 ☐ No. SKIP q. 126-132	126. Type: ☐ Incandes. ☐ Fluoresc. ☐ Neon	127. Power _____ VA	128. Electrical Contractor License Number:									
129. Address of Electrical Contractor (include Zip)		130. Signature of Licensed Electrician		131. Phone No.									
132. License No.													
133. Height relative to building and ground (a) _____ ft _____ in above sidewalk (b) _____ ft _____ in above roof (c) _____ ft _____ in is building height (d) _____ ft _____ in above projection of window (e) _____ ft _____ in from roof to sign's bottom		134. Material of Sign		135. Type of Sign									
136. Color													
137. Width ft.		138. Length ft.	139. Area of Sign sq. ft.	140. Wide of Business frontage ft.									
141. C of O No for Bldg.	142. Sign Contractor: License No.		OFFICIAL USE ONLY										
143. Sign Contractor's Address:		144. Phone:	<table border="1"> <tr> <th>Sign FEE</th> <th>Elect. FEE</th> <th>Total FEE</th> </tr> <tr> <td>\$</td> <td>\$</td> <td>\$</td> </tr> <tr> <td>By:</td> <td>Date:</td> <td>By: Date:</td> </tr> </table>		Sign FEE	Elect. FEE	Total FEE	\$	\$	\$	By:	Date:	By: Date:
Sign FEE	Elect. FEE	Total FEE											
\$	\$	\$											
By:	Date:	By: Date:											

(I) APPLICANT'S SIGNATURE

A. OWNER: I hereby certify that I am the owner of the property, that the application and plans are complete and correct to the best of my knowledge, that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Owner [Signature] Address 3030 KS, NW, 20007 Date 11-15-06

B. AGENT: I hereby certify that I have the authority of the owner to make this application. I declare that the application and plans are complete and correct to the best of my knowledge. The owner has assured me that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia

Signature of Agent _____ Address _____ Date _____

TO REPORT WASTE, FRAUD,
OR ABUSE BY ANY D.C. GOVERNMENT
OFFICIAL, CALL THE D.C. INSPECTOR
GENERAL AT 1-800-521-1639



3/1

To: All Unit Owners

From: Ken Joy, President
Washington Harbour Condominium Association

Date: August 18, 2004

Re: Auction of License for use of Five New Parking Spaces

After considering the matter during the last year, the Board of Directors of your Condominium Association has determined that it is in the best interest of the Association to create five new parking spaces in the garage and assign use of them to Unit Owners under a License Agreement. Such License Agreement would give a Unit Owner the exclusive use of the space, but not ownership of the property. A copy of the License Agreement to be used in assigning each of the parking spaces is attached. No variations from this Agreement will be allowed.

To secure an assignment of one of these five new parking spaces under a License Agreement a Unit Owner must pay to the Association an upfront fee and then a monthly maintenance fee to be applied to the upkeep of the garage. The Board recognizes that parking spaces in the building are very valuable assets and that it has a fiduciary duty to the Association as a whole to obtain the best price for such assets. Accordingly, it has decided to assign the new parking spaces to the highest bidders at an auction to be held on September 15, 2004 at 9:00 a.m. in the parking garage of the Condominium. Registration for the auction will take place between 8:30 and 9:00 a.m. on September 15th. Only those who complete registration will be allowed to bid. (Please note that only those Unit Owners whose accounts with Washington Harbour Condominium are current as of EST 5:00 p.m. on Friday, September 10, 2004 will be allowed to register and bid. This means that all assessments for units and parking spaces including, specifically without limitation, the special assessment recently levied must have been paid in full by the Unit Owner no later than September 10th @ EST 5:00 p.m.)

000127

With respect to one of the five parking spaces, only those Unit Owners who currently own less than two parking spaces will be allowed to bid. This provision is being made as a result of the Parking Committee's Report to the Board, which in large part is based on a survey of the Unit Owners. The remaining four spaces will be open to bidding by any Unit Owner.

The Rules and Procedure for the auction are set forth below, and all Unit Owners who participate in the auction will be bound by them.

1. The five new spaces are designated as Spaces 1, 2, 3, 4 and 5. Their location is shown on the attached, rough, schematic drawing of the garage. Bidding for a License Agreement on Space 5 will be open only to Unit Owners who currently own less than two parking spaces. Bidding for a License Agreement on Spaces 1, 2, 3, and 4 will be open to any Unit Owner.

2. Only Unit Owners or their duly authorized Proxy will be allowed to bid in the auction.

3. Space 5 will be auctioned first. The minimum bid for Space 5 is \$40,000, and bids will only be accepted in \$2,500 increments until the bid price reaches \$50,000. Thereafter, bids in \$1,000 increments will be accepted until the highest bidder is identified.

4. Spaces 1 through 4 will be auctioned together. The minimum bid for these spaces is \$50,000. Bids will only be accepted in increments of \$5,000 until the bid price reaches \$70,000. Thereafter, bids will be accepted in increments of \$1,000. The last and highest bidder will get first choice of the 4 parking spaces. The next highest bidder will get second choice of the remaining parking spaces. The third highest bidder will get third choice of the remaining parking spaces, and the fourth highest bidder will get the last available parking space. In the event of a tie in the bid amounts of any of the four highest bidders, a coin toss will determine the order of the tied bidders' choices.

5. Except as provided below, once a Unit Owner is a successful bidder on a space, the Unit Owner, regardless of the number of units he/she/it owns, is disqualified from bidding on another space. For purposes of this auction, the term "Unit Owner" shall include all members of the person's family, and other entities controlled by, controlling, or under common control with a Unit Owner. (For example, if a person owns a unit personally and another unit or units through corporations or any other form of entity or with another person, they shall all be deemed to be one "Unit Owner" for all purposes related to this auction.) In the event that there is not a minimum bid made for a space, a Unit Owner, who otherwise would be disqualified as a result of having been a successful bidder on another parking space, may participate in the bidding for the space; if this occurs, the Unit Owner shall designate which one of his

units the additional space(s) shall be appurtenant to and it may be a different unit than the one to which his first successful bid is appurtenant.

6. Unit Owners who are not able to attend the auction in person may participate by Proxy. The Proxy form to be used is attached to this Memorandum. (No variations of this Proxy form will be allowed.) Only fully completed Proxy forms received by the Board prior to the commencement of the auction will be recognized.

7. The auctioneer's determination of the successful bidder, the winner of a coin toss, and any other issue that may arise will be final and binding on all who participate in the auction.

8. At the conclusion of the auction, each successful bidder shall be required to tender his check in the full amount of the successful bid. Such checks shall be reduced to cash and held in escrow by the Association's counsel until such time as the attached License Agreement has been fully executed.

9. Within 15 days of the date of auction, the successful bidder and the Association shall execute the License Agreement attached hereto.

10. In the event the Association for whatever reason is unable to complete the assignment of the new parking space or execute the License Agreement, the successful bidder's sole remedy is the return of the bid amount.

11. Notice of Restriction on Assignment of Parking Space License Agreement
While the License Agreement provides that the parking space shall automatically transfer to a new Unit Owner upon the sale of the individual unit to which it is assigned, the parking space may not otherwise be sold and/or leased unless and until the Association has determined that it will not repurchase or lease the space in question. To that end, upon the proposed transfer of any of these five spaces to anyone other than a subsequent purchaser of the unit to which the license has been assigned, the Unit Owner of the space must first offer in writing the space back to the Association at the original purchase price. The Association shall have a period of forty-five (45) days within which to determine whether or not to reacquire the space at the original selling price. In the event the Association fails to respond within the forty-five (45) day time period, it shall be deemed a waiver of its right to reacquire the space on this particular transfer, and the Unit Owner thereof shall be free to transfer the License Agreement for the space in accordance with the terms and conditions which have been presented to the Association in connection with the proposed transfer. Notwithstanding the possible determination by the Association not to reacquire any such space upon a transfer not appurtenant to a transfer of the unit in question, the Association shall have the continuing right, with respect to all subsequent conveyances of the space in question (except, again, with respect to a transfer of the space along with the unit to which it is

assigned), to once again determine whether or not to reacquire the space at the original auction price.

12. Unit Owners who obtain a License Agreement for use of a parking space will be required to pay a monthly use fee to the Association. Such fee shall be determined by the Board of Directors on a yearly basis and shall be the same amount as the monthly maintenance fee charged on existing spaces in the garage.

* * * * *

Your Board of Directors is aware that there are competing interests for these spaces. However, to fulfill our fiduciary duty to the Unit Owners collectively we must plan for the orderly use of this property and, at the same time, attempt to derive the maximum return available with respect to property of the Association. Similarly, the Board feels that it has the obligation to enhance the marketability of individual units and, to that end and except as otherwise set forth herein, the Board has restricted the assignment of new spaces to not more than one space per Unit Owner:

Finally, most of us are aware that certain of the areas which are the subject of this auction have been used, from time to time, and may, in fact, still be being used by individual Unit Owners. Those individuals who have automobiles, motorcycles, or other personal property located in any of the parking areas involved should plan on having them removed by the time and date of the auction. Any such items of personal property which remain in these spaces after the date and time of the auction will be removed by the Association at the Unit Owner's cost.

Enclosures

PARKING SPACE REVOCABLE LICENSE AGREEMENT

THIS AGREEMENT is entered into as of this _____ day of _____, _____, by and between Washington Harbour Condominium Unit Owners Association ("Association"), the address of which is 3030 K Street, N.W., Washington, D.C. 20007 (attention President), and:

_____, ("Unit Owner"), whose address is _____.

Recitals

- A. Unit Owner owns unit # _____ in Washington Harbour Condominium.
- B. The Association is responsible for the management of common elements, including certain general common elements which may be used for parking purposes.
- C. Unit Owner for himself and/or for the occupants of unit # ____ wishes to use Parking Space # _____ ("Space"), which is part of the general common elements managed by the Association.
- D. For the convenience of Unit Owner, the Association is willing to allow such use of the Space, subject to the provisions hereof.

In consideration of the mutual promises and covenants herein, the Parties agree as follows:

1. The Association hereby grants a revocable license to Unit Owner for the use of the Space, subject to the terms and conditions hereof. This revocable license is assigned specifically to unit # _____, and cannot be transferred to any other unit now or hereafter, including any other unit owned by Unit Owner, unless the procedures set forth below in Section 8 are followed.
2. The term of this Agreement shall commence on October 1, 2004 and continue in effect until terminated as set forth herein. The Space shall only be used by the Unit Owner or the occupants of his unit # _____; use by any other person will be deemed a breach of this Agreement.
3. The Space shall be used only for the parking of one operable, licensed passenger motor vehicle and/or such combination of motorcycles/motorbikes/motor scooters, which must fit completely within the Space, and for no other purpose. The Space shall not be used in violation of the Declaration, Bylaws or Rules of Washington Harbour Condominium, or in violation of any applicable laws, codes, ordinances and regulations. Except as necessary for the normal operation of a motor vehicle, no hazardous substance shall be kept in the Space, nor shall any hazardous, unsafe or unsanitary condition be permitted in the Space. No

vehicle repairs shall be performed in the Space, and no fluids shall be drained or spilled from any vehicle therein.

4. Unit Owner shall pay the Association a monthly use fee ("Fee") for the license hereby granted. The current monthly use fee is \$190.56 beginning on October 1, 2004. Payments shall be made to the managing agent of the Association and shall be due on the first day of each month. A late fee of \$25 shall be charged for each monthly payment not received by the managing agent by the 5th day of the month. The Association's Board of Directors shall have the right, from time to time, to increase the Fee, provided, however, that, before any increase shall be effective, the Association must give 30 days' written notice of such increase to Unit Owner, and Unit Owner shall have the option, during such 30-day notice period, to terminate this Agreement. In the event of termination, the Unit Owner will not receive a refund of the original bid amount. If Unit Owner does not exercise the option to terminate this Agreement after such notice, Unit Owner will be deemed to have agreed to pay such increased Fee. The yearly Fee established shall always be the same as the monthly maintenance fee assessed to other parking space Unit Owners.

5. Neither this Agreement nor any rights granted herein shall be construed as a lease or other interest in real property, and shall not confer upon Unit Owner any rights as a tenant.

6. Unit Owner shall use the Space at Unit Owner's own risk, and Unit Owner hereby expressly agrees to assume such risk. The Association shall have no liability for loss of, or damage to, any vehicle or other property in the Space.

7. Unit Owner hereby releases, indemnifies and holds harmless the Association, and its members, directors, officers, agents, contractors and employees, from and against any and all injuries, claims, damages, or causes of action, of any kind whatsoever, including costs and attorney's fees, arising in connection with Unit Owner's use of the Space or in connection with Unit Owner's operation or parking of a vehicle on the property.

8. Upon the sale of unit # _____, this Agreement shall automatically transfer to the new unit owner, who shall use the Space in accordance with the terms of this Agreement. Other than upon the sale of unit # _____, Unit Owner cannot assign or transfer his rights under this Agreement to anyone other than another Unit Owner and only after completion of the following procedure:

- a.) Unit Owner shall notify the Association's Board of Directors in writing of any proposed assignment or transfer of his rights to use the Space under this Agreement and provide the Association with the opportunity to take back the Space and terminate this Agreement by returning to Unit Owner his original bid amount of \$ _____ ("original bid amount"). In such submission, the Unit Owner shall identify the unit and unit owner that are involved in the proposed assignment or transfer. Assignments or transfers to an individual or entity that is not a unit owner in the Washington Harbour Condominium are expressly prohibited, and a submission

proposing any such assignment or transfer shall be deemed void without the need for a response from the Association's Board of Directors.

- b.) Within 45 days of receipt of the Unit Owner's notice, the Association's Board of Directors shall advise the Unit Owner in writing as to whether it will exercise its right to take back the Space and terminate this Agreement.
- c.) In the event that the Association elects to take back the Space, it shall deliver to Unit Owner the original bid amount of \$_____ together with a notice terminating this Agreement within the 45 day time period in b.) above.
- d.) In the event the Association's Board of Directors decides not to take back the Space or fails to respond to the Unit Owner within the 45 day time period, the Unit Owner may transfer this License Agreement in accordance with the terms and conditions which were presented in Unit Owner's notice to the Association under a.) above.
- e.) Notice of any completed transfer must be provided in writing to the Association by the Unit Owner, and the new Unit Owner shall execute a copy of this Agreement and agree to be subject to all terms and conditions herein. Until such notice is received by the Association and a new Agreement is executed, the Unit Owner shall not be relieved of liability under this Agreement and the transferee shall not have any right to use the Space.
- f.) In the event that the Association re-auctions a Space that it has taken back under this procedure, the Unit Owner shall be prohibited from bidding at the auction, unless such auction date is more than six months after the date of the take-back.

9. In addition to any other rights set forth in this Agreement, the Association shall have the right to terminate this Agreement if Unit Owner, after 15 days notice, fails to cure any delinquency in payment of any Fee or late charge due hereunder. The Association shall also have the right to terminate the Agreement at any time if after 30 days written notice, the Unit Owner or the occupants of Unit Owner unit, fails to cure a violation of this Agreement, of any applicable law, or of the Declaration, Bylaws or Rules of Washington Harbour Condominium. A second breach of the same provision within a twelve month period shall result in automatic termination of this Agreement. Finally, the Association shall have the right to immediately terminate this Agreement if the Unit Owner's unit is foreclosed upon by the Association. The failure of the Association to take action to terminate as provided in this Paragraph shall not be deemed a waiver of its right to do so as a result of a subsequent breach by Unit Owner.

10. Upon termination of this Agreement, Unit Owner shall immediately and permanently vacate the Space and remove Unit Owner's vehicle(s) and any of Unit Owner's other personal property therefrom. If Unit Owner fails to do so within 7 days of termination, the Association shall have the right without further notice to the Unit Owner, and without liability to Unit Owner or any other party, to enter the Space and remove any vehicle or vehicles or other property. The Association shall not be responsible for the storage of any of Unit Owner's vehicles or property, and shall have no liability to Unit Owner for loss of, or damage to, any vehicle or other property. Unit Owner shall be liable for any and all costs incurred in removing, storing and disposing of vehicles or other property from the Space. In addition, the Association shall have the right to take legal action against Unit Owner for any violation of this Agreement, including without limitation any failure to pay the Fee or any installment thereof or for any costs incurred by the Association in enforcing this Agreement or its rights hereunder. In the event of such legal action, Unit Owner shall be liable for any and all costs and attorney's fees incurred by the Association.

11. Except as provided in Section 8 above, the Unit Owner shall not be entitled to a refund of his original bid amount upon termination of this Agreement.

12. This Agreement shall be binding on, and shall, subject to the limitations on assignment/transfer set forth herein, inure to the benefit of, the parties and their respective heirs, successors and assigns. This Agreement contains the entire understanding of the parties. This Agreement may not be changed orally, but only by an agreement in writing signed by the parties.

13. Notices required or permitted to be given under this Agreement shall be deemed sufficient if in writing and hand delivered or sent by certified U.S. Mail or overnight delivery to the parties at the addresses shown above. Notice by mailing or overnight delivery shall be deemed given upon delivery or as of the date that delivery is refused or unclaimed.

14. This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first set forth above.

WASHINGTON HARBOUR
CONDOMINIUM UNIT OWNERS
ASSOCIATION

UNIT OWNER

By _____
Title

By _____
Secretary

Witness



PROXY FORM

WASHINGTON HARBOUR CONDOMINIUM UNIT OWNERS ASSOCIATION

SEPTEMBER 15, 2004 PARKING SPACE LICENSE AUCTION

I/we _____, Unit Owner(s) for unit _____ in the
print name(s)

Washington Harbour Condominium do hereby appoint _____ as
my/our Proxy for the purpose of bidding on my/our behalf at the Parking Space License
Auction. My/our Proxy has full discretion in bidding on my/our behalf and his/her
bids shall be fully binding on me/us.

Signature of Unit Owner

Signature of Unit Owner

Date

Date

Signature of Witness

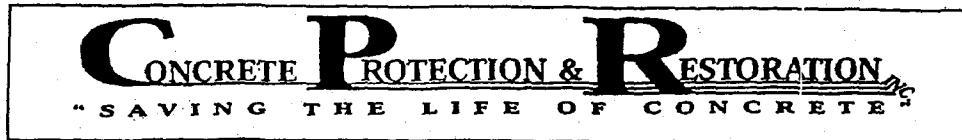
Signature of Witness

Address of Witness

Address of Witness

**SIGNATURES MUST BE WITNESSED. WITNESSES MUST WRITE THEIR
ADDRESSES WHERE INDICATED.**

000135



INVOICE

Re: Traffic Coating

TO: The Washington Harbour Condominium
Unit Owner's Association
3030 K Street, NW
Washington, DC 20007

DATE: 9/20/04

INVOICE NO: 1841-1

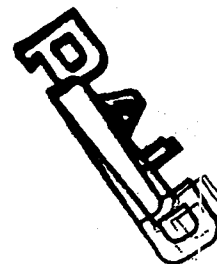
TERMS: Net 14 Days

Re: Parking Garage Traffic Coating

Attn: Joyce Pattenson

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1	Traffic Coating/Striping	\$2,500.00	\$2,500.00
1	Additional Striping	\$150.00	\$150.00
	TOTAL DUE THIS INVOICE		\$2,650.00
	LESS PREVIOUS BALANCE		\$0.00
	TOTAL DUE THIS INVOICE		\$2,650.00

Remit To: Concrete Protection & Restoration, Inc.
6737 Dogwood Road
Baltimore, MD 21207
(410) 298-2669



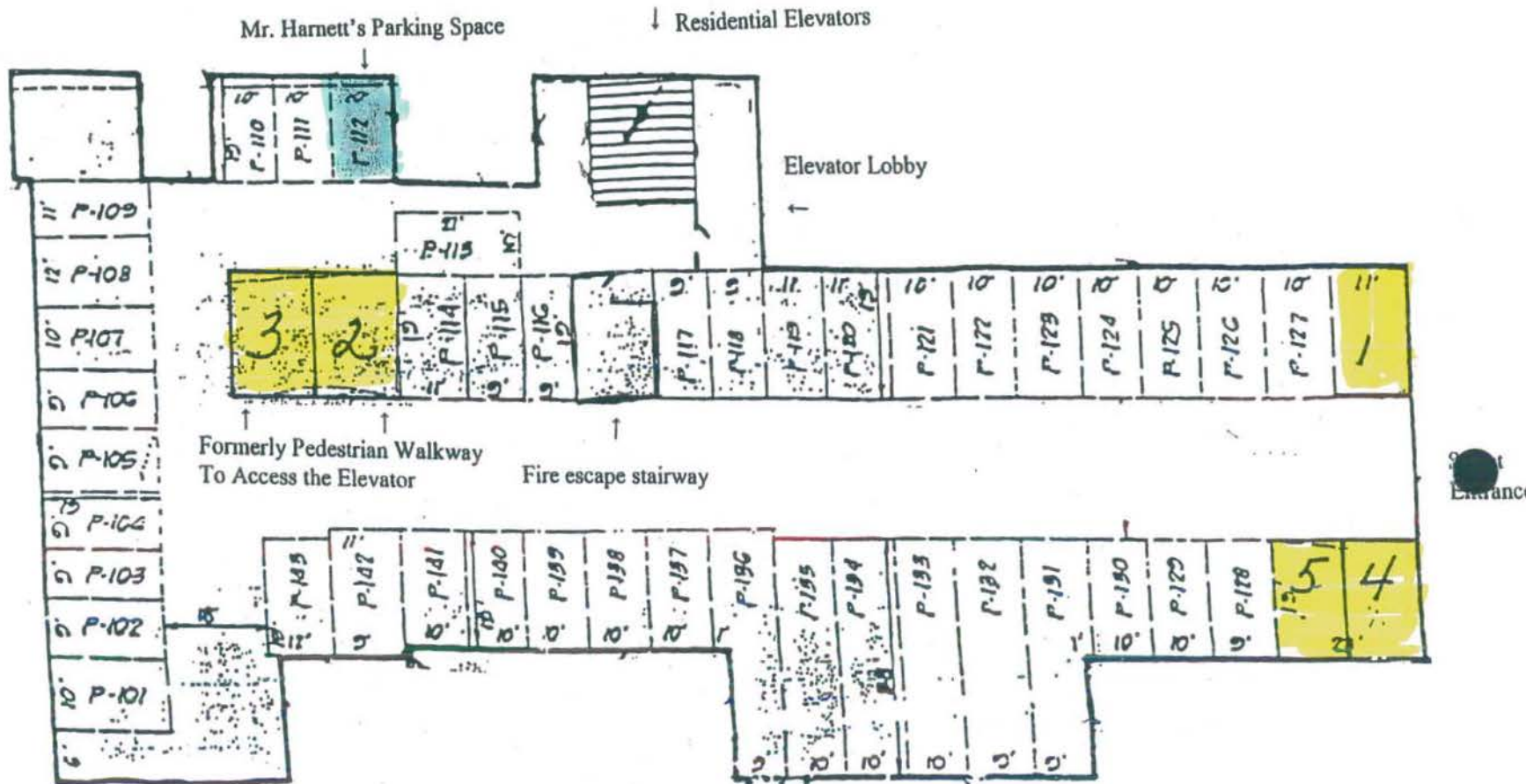
cc: A/R, Job File

THANK YOU

Enclosure A

Washington Harbour Condominium Residential Parking Garage

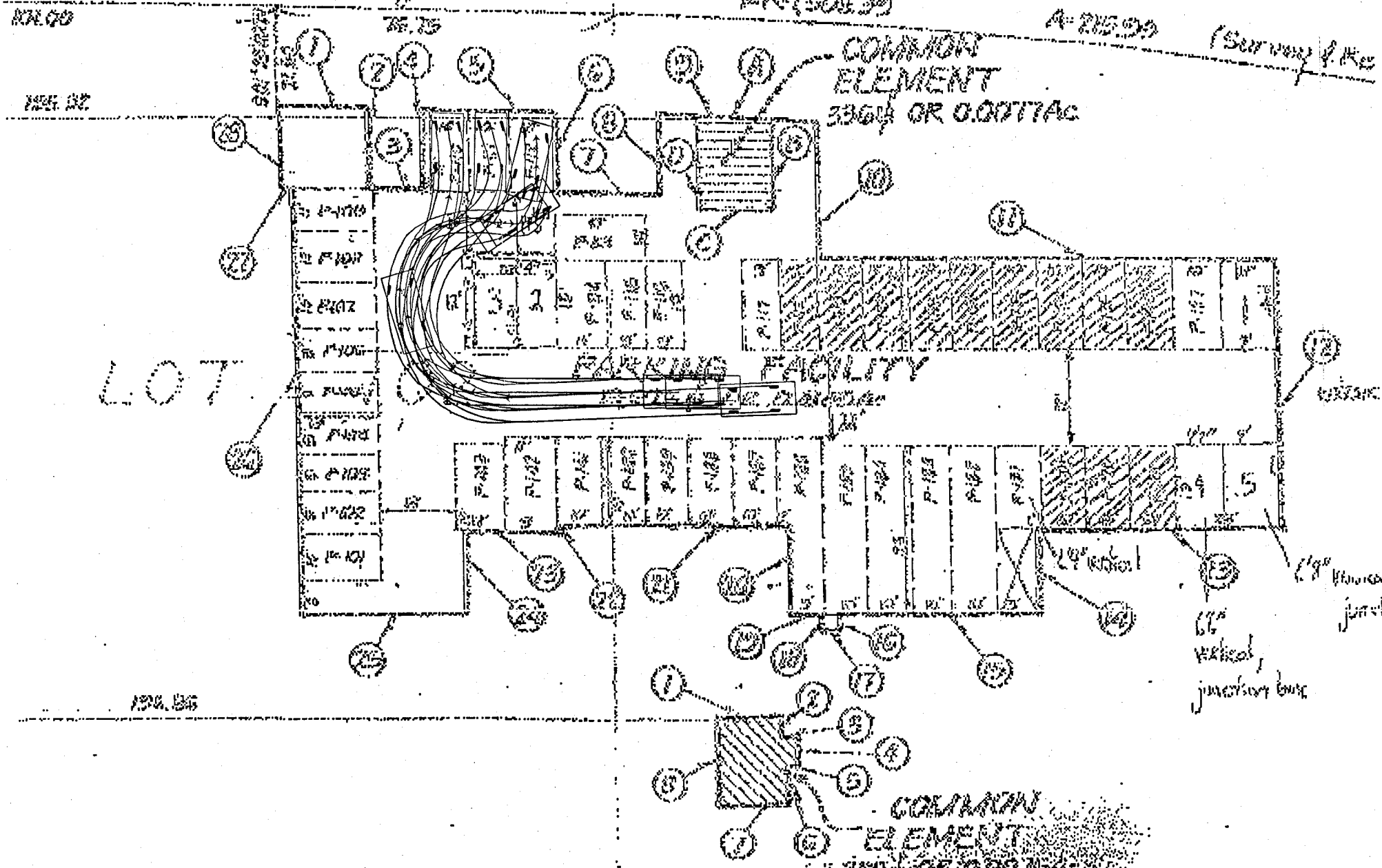
(new spaces are marked with handwritten numbers 1 through 5)



POTOMAC RIVER FREEWAY



$\Delta 585^{\circ}36'20''$ E-111.75 (Record)
 $\Delta 585^{\circ}36'14''$ E-111.75 (Survey)





← 16' 10" →

(taken from aisle between parking space #112 and spaces 2 and 3)

(top photo taken from parking spaces 2 and 3)



Photos taken 10/18/06 demonstrating inability to use parking space #112 when parking spaces 2 and/or 3 are occupied.



(bottom photo taken from space #112 looking back at spaces 2 and 3. The dust is the result of being unable to move the car for over two years)



Additional photos showing interference with use of parking space #112





Additional photos showing interference with use of parking space #112 (pictures taken from the perspective of "new" parking space 2).





Additional photos showing interference with use of parking space #112 (pictures taken from the perspective of "new" parking space 2).





Photos showing room to move from parking space #112 when unimpeded (such as when parking spaces 2 and 3 were a pedestrian walkway)





Photos taken 9/16/06 showing unpermitted sign directing pedestrian traffic through narrow parking space 116 to residential elevators, instead of prior pedestrian walkway that is now parking spaces 2 and 3.

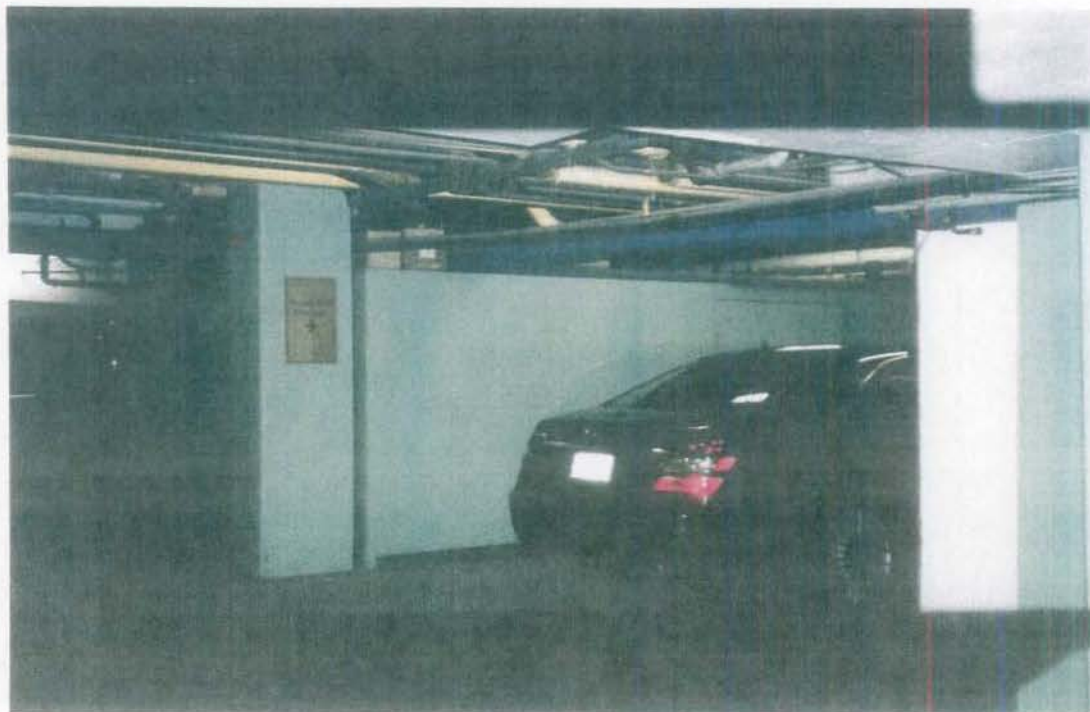




Photo showing lack of striping and wheel stops at the end of parking spaces 2 and 3.



Example of wheel stop used in legal parking space.



Photo taken 9/21/06 showing column extending below 6' 6" on parking space 5, as well as overhanging plumbing and electrical utilities.





Photos showing high voltage electrical, plumbing, and gas utility facilities over parking space 4.













**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION**

941 North Capitol Street, NE • Suite 2000 • Washington, DC 20001 • ☎ 202-442-4460

NOTICE OF VIOLATION AND NOTICE TO ABATE

ADDRESS OF VIOLATION 3030 K STREET, N.W.	CONTROL NUMBER
BUSINESS NAME PARKING GARAGE	TYPE OF INSPECTION ☐ CONSTRUCTION ☐ ELECTRICAL ☐ FIRE PROTECTION ☐ PLUMBING ☒ OTHER Zoning
OWNER'S NAME KEN JOY, President (Washington Harbour Cntrl. Asso.)	
DATE OF INSPECTION ~~10/27/04~~ 10/27/04	TIME OF INSPECTION 12:00pm

An inspection of the ☐ Construction ☐ Electrical ☐ Fire Protection ☐ Plumbing ☒ **Zoning** features at the above address was performed on the above date. The inspection revealed the violation(s) cited hereafter. The owner is required to abate the violation(s) by taking the corrective action(s) specified below:

CODE SECTION	VIOLATION	REQUIRED CORRECTIVE ACTION
DCMR 12 105.1	STEERING PARKING GARAGE w/o APPROVED PLANS/BUILDING PERMITS	OBTAIN PLANS AND BUILDING PERMITS FOR PARKING GARAGE
DCMR 11 2117	ACCESS, MAINTENANCE, AND OPERATIONS.	" " "

The cited violation(s) must be abated as ordered within ☒ **72** hours
☐ **0** days from receipt of this notice. Failure to comply will result in this notice being forwarded to the Office of Compliance for enforcement action.

NAME OF PERSON NOTIFIED (PLEASE PRINT) JOYCE K. PATTINSON	DATE OF RECEIPT OF NOTICE 11/4/05
SIGNATURE OF PERSON RECEIVING NOTICE <i>Joyce K. Pattinson</i>	POSITION Residential Director TELEPHONE 202 944-4230
INSPECTOR (PRINT) Alex T. JAMES / TOYE BELLO	INSPECTOR'S TELEPHONE 202-442-4576 - 442-9500
INSPECTOR'S BADGE # 790	DATE OF NOTICE 11/4/05 TIME OF RECEIPT OF NOTICE 12:20pm

**TO REPORT WASTE, FRAUD OR ABUSE BY ANY D.C. GOVERNMENT OFFICE
OR OFFICIAL, CALL THE INSPECTOR GENERAL AT 1-800-521-1639.
ALL CALLS ARE CONFIDENTIAL.**