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September 21, 2007

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Via Hand Delivery

Ruthanne G. Miller, Chairman
Board of Zoning Adjustment
441 Fourth St., NW
Suite 210 South
Washington, DC 20001

Re: Board of Zoning Adjustment Appeal No. 17615
Response to Appellants' Proposed Findings of Fact, Conclusions of Law and Order

Dear Chairman and Members of the Board:

On behalf of Washington Harbour Condominium Unit Owners Association, Inc. (the "Association"), enclosed please find twenty (20) copies of the Association's Response to Appellant's Proposed Findings of Fact, Conclusions of Law and Order (the "Response") for the above-referenced appeal.

By copy of this letter, each party to the appeal is served with the Response. Please contact us if you have any questions or require additional information.

Sincerely,

LINOWES AND BLOCHER LLP

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17615

EXHIBIT NO. 37

Enclosures

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Ruthanne G. Miller, Chairman

September 21, 2007

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cc: Mr. Kenneth Joy
Mr. Robert Pence
Raymond B. Via, Jr., Esq.
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Mr. Matthew LeGrant

L&B 864354v1/10043.0002

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

In Re Appeal of:

William J. Harnett

v.

Zoning Administrator

**Department of Consumer and Regulatory
Affairs**

BZA Appeal No. 17615

Public Hearing: July 31, 2007

(Continued from Jun 5, 2007

And July 17, 2007)

**OWNER'S RESPONSE TO APPELLANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**
Submitted September 21, 2007

Washington Harbour Condominium Unit Owners' Association, Inc. ("Owner"), by its undersigned attorneys, Linowes and Blocher LLP, hereby submits this Response to Appellant's Proposed Findings of Fact, Conclusions of Law, and Order ("Response"). Upon careful review of Appellant's Proposed Findings of Fact, Conclusions of Law, and Order, the Owner believes that the Appellant has not met his burden of proof in clearly establishing error on the part of the Department of Consumer and Regulatory Affairs ("DCRA") and/or the Zoning Administrator in interpreting Title 11 of the District of Columbia Municipal Regulations ("DCMR"), entitled "Zoning" (the "Zoning Regulations"), and issuing Building Permit No. 101019 (the "Permit") to the Owner, such burden being set forth in 11 DCMR §§ 3100.2 and 3119.2. Ultimately, the Appellant's allegations of error are based on strained interpretations of the Zoning Regulations and are not supported by the clear weight of evidence in the record. The Owner has provided to the Board of Zoning Adjustment (the "Board" or "BZA") what it believes to be the proper factual findings and legal conclusions in this matter in its proposed Order, submitted to the Board on September 7, 2007 (the "Owner's Proposed Order").

Appellant's Proposed Findings of Fact Are Largely Irrelevant

Apart from Appellant's failure to meet his burden on appeal, the Owner is extremely disturbed by Appellant's proposal that the Board adopt numerous findings of fact that are irrelevant and outside the scope of the issues properly before the Board on appeal. Despite repeated requests by the Board at the public hearings for the Appellant to address only those facts and issues that the Board has the jurisdiction to review or that are relevant to the Board's determination of those issues, the Appellant has disregarded the clear direction of the Board with its proposed findings of fact. See June 5, 2007 public hearing transcript at Pages 71, 77-80, 95-100, 108-109, 126-127; See July 17, 2007 public hearing testimony at Pages 390-392; See July 31, 2007 public hearing transcript at 45-46, 78-82, 94, 113-115, 131-133, 156-157. While the Appellant's proclivity to present irrelevant facts and arguments at the public hearings resulted only in delay and potential confusion for the Board, the Appellant's suggestion that the Board adopt similarly irrelevant and improper findings of fact in its Order pose far more upsetting potential consequences.

First and foremost, the Board should, as it would in any instance, decline to adopt any of Appellant's findings of fact that are not supported by the evidence of record or which are not relevant to a contested interpretation or application of the Zoning Regulations in this case. It should be noted that many of the Appellant's proposed findings of fact are not even relevant to his *own* proposed conclusions of law regarding the merits of the appeal under 11 DCMR §§ 2100.2, 2100.3, 2115.5, 2116.8, 2116.9, 2117.1, 2117.2, 2117.3, 2117.5 and 2117.7.

Concerns Regarding Collateral Estoppel

However, in addition to the considerations of weight and relevance that the Board will use in making its findings of fact for the appeal, the Owner suggests that the Board should also be mindful of Appellant's attempts to use the Board's factual findings to take advantage of the judicial doctrine of collateral estoppel. As the Board is aware from certain items that the Owner and DCRA have placed into the record, the Appellant is concurrently challenging the Owner's creation of the subject parking spaces in the Superior Court of the District of Columbia on numerous grounds. See Ex. 18; Ex. 22, Item 28; and Ex. 30. This related litigation has been in the Superior Court for nearly three years and is currently proceeding with extensive factual discovery. Indeed, many of the findings of fact proposed by the Appellant, while not relevant to the appeal before the Board, may be relevant to claims that have been or are to be decided by the Superior Court.

The Board has been made aware of this litigation and is being reminded of it as part of this Response for two primary reasons. First, the Owner and DCRA want the Board to know that certain arguments and claims being made by Appellant are, in fact, before and under the proper jurisdiction of the Superior Court. Most importantly in this regard, the Superior Court ruled that the Owner had the authority to create the subject parking spaces and exercised that authority properly under the District of Columbia Condominium Act and the Owner's condominium documents. See Ex. 18; Ex. 22, Item 28. Second, and the main reason that the Owner is again raising the existence of concurrent litigation at this time, is that the doctrine of collateral estoppel in the District of Columbia can, in certain circumstances, be applied to preclude a court of law from reviewing issues or revisiting findings and conclusions that have been previously determined by an administrative agency. See *District Intown Properties, Ltd. v. DCRA*, 680 A.2d 1373, 1378 (D.C. 1996) (explaining the doctrine of administrative collateral estoppel). Regardless of the Board's decision in this case, the Owner does not wish to see the Board's findings of fact hijacked and used in the proceedings before the Superior Court. It seems almost transparent to the Owner that the Appellant is attempting to misuse the Board's fact-finding authority for inappropriate purposes to preclude independent findings and conclusions on separate, but related, matters that have been the subject of extensive and fully developed fact-finding pursuant to the Superior Court's jurisdiction over pending litigation.¹

¹ On the topic of the fact-finding proceedings that have taken place before the Superior Court, the Owner believes it is appropriate to redirect the Board's attention to the Appellant's continuing pattern of frivolous and unsuccessful discovery efforts that led District of Columbia Superior Court Judge Frederick H. Weisberg, in his February 23, 2007 order to deny the last of five Motions to Compel filed by Mr. Harnett in Civil Action No. 04-7452:

"From the court's vantage point, which admittedly is outside the fray, if this case never gets resolved, it will be because of Plaintiff's [Mr. Harnett] attempt to make it something it is not—a one resident crusade to root out corruption and mismanagement of a condominium association, acting though its board, alleged to be acting in dereliction of its duty to represent all residents fairly and equitably—rather than what it is, which is a claim by one resident that he is being discriminated against..." See Ex. 30.

In conjunction with and in complement to the potential legal consequences of the Board's findings of fact, discussed above, are the legal limits on the Board's ability to make findings and conclusions outside the scope of its review authority. Specifically, the Board must only make findings and conclusions that are essential to its decision in this matter. *Id.* at 1379. The Owner trusts that, as has been repeatedly explained to the parties involved in the appeal, the Board will limit its findings of fact and conclusions of law to those that are essential and relevant to the determination of whether DCRA and the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit.

This Response takes each section of the Appellant's Proposed Findings of Fact, Conclusions of Law, and Order in turn and provides brief responses below.

RESPONSE TO APPELLANT'S PROPOSED DECISION AND ORDER

Appellant claims that the Zoning Administrator relied only on "a copy of a scaled drawing, with handwritten additions made by WHCA," in determining the Permit's conformance to the Zoning Regulations. The Appellant fails to include the other materials and information that DCRA and the Zoning Administrator relied upon in issuing the Permit, including the Permit plans and communications and independent review of the Zoning Regulations by DCRA and the Zoning Administrator. There is no finite file of information from which the Zoning Administrator must extract information.

RESPONSE TO APPELLANT'S DISCUSSION OF PRELIMINARY MATTERS

The Parties

The Appellant incorrectly states that the Board allowed the Owner to intervene in the appeal. In fact, the Board confirmed that pursuant to §3199.1, the Owner was automatically a party to the appeal. See June 5, 2007 public hearing transcript at 49-53. ANC 2E did make a written submission into the record, but that submission was not in reference to the current appeal, did not represent a procedurally proper expression of ANC 2E's opinion and did not provide any relevant or substantive opinions or recommendations.

ANC Report

Again, ANC 2E did make a written submission into the record, but that submission was not in reference to the current appeal, did not represent a procedurally proper expression of ANC 2E's opinion and did not provide any relevant or substantive opinions or recommendations. ANC 2E's June 28, 2007 letter was in reference to a letter it sent to the Board on October 6, 2006 on a different and distinct proceeding before the Board and is not entitled to consideration, let alone "great weight" in this proceeding. ANC 2E had notice of the current appeal and had every opportunity to review and take action on the Appeal in an open and public forum and submit comments to the Board in a timely fashion and chose **not** to do so. See Ex. 26. Further, the June 28, 2007 letter from ANC 2E, as with the October 6, 2006 letter from ANC 2E, is strikingly absent of any substantive consideration, evaluation or discussion of the issues involved with the appeal. ANC 2E simply states that it "supports the Appellant", but does not indicate why or evidence an appreciation for the neighborhood or district-wide implications of the issues presented. Therefore, even if the Board chooses to consider or provide "great weight" to ANC 2E's June 28, 2007 letter, the Board can satisfy its legal burden in this regard by acknowledging

the letter and disposing of it with a substantive explanation of the findings and conclusions that the BZA makes on the Appeal.

Motion to Compel

The Owner was never legally obligated to produce any correspondence between it and the current or previous Zoning Administrators and never committed to do so. In addition to the fact that the Owner was not obligated to produce correspondence and that the Board did not have the authority to compel correspondence, the Board was also very clear that the information sought by the Appellant was not relevant or necessary to the Board's determination of the zoning issues involved in the appeal and that all necessary information to review the Zoning Administrator's decision in this case was available and before the Board. See July 31, 2007 public hearing transcript at Pages 46, 59-60, 78-82. In fact, one Board member agreed with the characterization of the information sought by Appellant as "background noise." July 31, 2007 public hearing transcript at Pages 81-82.

Zoning Administrator's Case

The Appellant should have noted this as DCRA's case, not the Zoning Administrator's, and noted that Mr. Lindsley Williams is a former District of Columbia Zoning Commissioner, serving from approximately 1981 to 1988. See July 17, 2007 public hearing transcript at Page 375.

RESPONSE TO APPELLANT'S PROPOSED FINDINGS OF FACT

Taken in turn below, the Owner recites and provides the following *responses* to each of the Appellant's 42 proposed findings of fact:

The Subject Property

1. The subject property is an underground parking facility located at 3030 K Street, N.W. (Square 1173, Lot 102) in the W-3 District. It is part of the Washington Harbour Condominium complex, which is a residential condominium built in the mid 1980's and containing 36 residential units, 48 originally approved parking units, and various limited common elements.

Owner's Response: *The Owner does not dispute or take issues with this proposed finding. It is substantively similar to Owner's proposed findings of fact #1-3.*

2. The Condominium was developed by Herbert Miller, through two companies, Washington Harbour Associates Limited Partnership and Georgetown Potomac Company. Those two companies were the original Owners of the Condominium when it was designed, approved, built, and sold.

Owner's Response: *This proposed finding is not supported by evidence of record and is irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit and should not be adopted by the Board.*

3. DCRA has been unable to locate the original approved parking plan for the Condominium, but portions of the Public Offering Statement were available and received in evidence, as an exhibit to Mr. Hartnett's rebuttal testimony. When the Condominium was developed and the residential and parking units were sold, there was no designation on the plans for the parking facility for any "non-required" parking spaces.

Owner's Response: *This proposed finding wrongly assumes that there was an "original approved parking plan" distinct from the parking facility plan of condominium subdivision. There may not have been, and this fact should not be assumed by the Board. The items attached to Mr. Hartnett's rebuttal testimony are, in fact, portions of the condominium plat for the subject property. The Owner agrees that these plans did not explicitly "designate" non-required spaces because no such designation was required by law. Further, what any prior plans may have shown is not relevant because the Zoning Administrator need only determine that the proposed spaces complied with current regulations. This point is addressed extensively in the Owner's Proposed Order.*

4. As originally constructed, approved, and sold, each of the parking spaces in the Condominium's parking facility met the required dimensions set forth in Section 2115.1 of the Zoning Regulations for "required spaces": each parking space was at least 9 feet wide and 19 feet long. The developers did not seek or obtain approval for any parking spaces less than those dimensions, and no parking spaces of less than those dimensions were constructed or sold.

Owner's Response: *The Owner agrees that the parking facility plan did not contain any parking spaces less than 9 feet wide and 19 feet long, however this should not be construed to mean that the distinction between "required" and non-required parking spaces was obviated. Even if the parking facility provided more than the "required" number of parking spaces, this was not because it was required to do so by law. It must also be recognized that the parking facility plan did contain an access aisle of less than 20 feet, thereby affirming that the distinction between "required" and non-required parking spaces did exist and allowed certain spaces to contain less than 20-foot access aisles (specifically, 18 feet). See Ex. 28. However, there is no evidence as to how each space was sold nor is it relevant to the Board's determination regarding whether the Permit was properly issued. Further, whether the developer sought approval for smaller spaces is not known, nor relevant. The Board should not adopt this proposed finding.*

5. When the Condominium was developed, the developer sold the parking spaces in the parking facility, and the residential units in the Condominium, to others. The current owners of the parking spaces are not WHCA, but rather the individuals and entities who own title to the parking units in fee simple absolute. Those owners also own an undivided interest in the limited common elements of the Condominium.

Owner's Response: *This proposed finding is wholly irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit and should not be adopted by the Board. Further, the Superior Court has already determined that the Owner had full authority to create and sell licenses to the subject parking spaces. See Ex. 18; Ex. 22, Item 28.*

6. Mr. Harnett purchased residential unit PH-206, and along with its parking units P-112 and P-116, over 20 years ago. He was the first owner of PH-206, P-112, and P-116, and acquired these interests from the developer. He was one of the first Unit Owners at Washington Harbour.

Owner's Response: *This proposed finding is irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit and should not be adopted by the Board.*

7. When he acquired these interests, Mr. Harnett was given the choice of any parking space in the parking garage. He looked closely at all of the spaces. He was told that the developer had initially submitted plans to the District for a parking garage consisting of 50 spaces but that the District refused to approve two of those spaces and limited the approved number of spaces to 48 – the number which the parking facility contained until 2004.

Owner's Response: *Not only is this proposed finding irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit, but it is also baseless, unreliable and self-serving hearsay that is not supported by any credible evidence of record. Appellant admitted no proof of this claim. See June 5, 2007 public hearing transcript at Pages 67-68 and July 17, 2007 public hearing transcript at Page 335. The Board should not adopt this proposed finding.*

8. After considering his options concerning his choice of any parking spaces within the parking facility, Mr. Harnett chose space P-112 because it was close to the residential elevators in the garage.

Owner's Response: *This proposed finding is irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit and should not be adopted by the Board.*

9. When Mr. Harnett acquired his interests, the area of which is now designated as spaces 2 and 3 was painted over with diagonal lines, and pedestrian traffic was directed through the area to the residential elevators. The areas now designated as spaces 1, 4, and 5 were used for storage. Over the years, there were times when people parked in the area now designated as spaces 2 and 3. When they did so, Mr. Harnett was unable to move his vehicle from P-112. He notified WHCA's Board of Directors about these problems.

Owner's Response: *This proposed finding is irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit. In addition, there is no clear and credible evidence of record as to the actual use of the limited common elements prior to the creation of parking spaces P1-P5 that can form the basis of a Board finding. Therefore, the Board should not adopt this proposed finding.*

The Decision to Alter the Parking Garage

10. In 2004, the Board of Directors sent out notices that it intended to create five "new" parking spaces and to auction them off. (Appellant's Prehearing Statement, Exhibit 2.) The notice sent out on August 18, 2004 included a map by which the Board indicated that the aisle width between space P-112 and new spaces 2 and 3 was seventeen feet.

Owner's Response: *The Superior Court has already determined that the Owner had full authority to create and sell licenses to the subject parking spaces. See Ex. 18; Ex. 22, Item 28. The proceedings related to the sale of the subject spaces are not relevant to the Board's decision. The pre-permit application and pre-construction dimensions of the referenced access aisle are irrelevant. The evidence of record, including the Permit plans, the Owner's measurements and the Appellant's measurements, shows that the referenced access aisle is at least 19 feet, 5 inches wide. See Ex. 18; Ex. 20; Ex. 22, Item 2. Therefore, the Board should not adopt this proposed finding.*

11. Although a majority of the Unit Owners asked the Board to at least delay its action in moving forward with this "auction," the Board refused to do so and decided to move ahead with the auction. The Board did not seek the approval of the Unit Owners, and the Unit Owners did not approve of any of the actions of the Board in conducting the auction or taking the other actions at issue on this appeal.

Owner's Response: *This proposed finding is not based on any evidence of record before the Board and is wholly irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit and should not be adopted by the Board. Further, the Superior Court has already determined that the Owner had full authority to create and sell licenses to the subject parking spaces. See Ex. 18; Ex. 22, Item 28.*

12. In anticipation of the auction, the Board had the parking garage repainted in 2004. The striped area was painted over and turned into spaces 2 and 3. The sign directing pedestrians to the residential elevators was moved to just inside space P-116, another parking space owned by Mr. Harnett, and pedestrian traffic was routed through P-116. (Appellant's Prehearing Statement, Exhibit 6 at page 7.) The Board authorized payment of \$2,650.00 for all of the work. (Appellant's Prehearing Statement, Exhibit 3.)

Owner's Response: *There is no clear and credible evidence of record as to the actual use of the limited common elements prior to the creation of parking spaces P2-P3 that can form the basis of a Board finding. While the Owner agrees that the subject parking spaces were painted in 2004 (see Owner's proposed finding of fact #5), the cost of the work is irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit. The Board should not adopt this proposed finding in its current form and should instead adopt Owner's proposed finding of fact #5.*

13. In its notice concerning the auction (Appellant's Prehearing Statement, Exhibit 2), WHCA identified the five parking spaces it intended to create. They were numbered consecutively, 1 through 5. Mr. Harnett had been told originally that the District had refused to approve the spaces identified as 1 and 4, because they were too close to the entrance door to the parking garage. In addition, Mr. Harnett was told initially that no approval was sought for the space identified as number 5, because it did not meet the vertical height requirements and had utility lines running through it. He was also told that space number 4 was not approved by the District because it did not meet the vertical height requirements and had utility lines running through it.

Owner's Response: Not only is this proposed finding irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit, but it is also baseless, unreliable and self-serving hearsay that is not supported by any credible evidence of record. Appellant admitted no proof of this claim. See June 5, 2007 public hearing transcript at Pages 67-68 and July 17, 2007 public hearing transcript at Page 335. The Board should not adopt this proposed finding.

14. The auction was conducted on September 15, 2004. WHCA did not follow all of the procedures it had outlined in the August 18, 2004 mailing. An advance registration requirement was imposed, and Mr. Harnett was not told about it until the new registration "deadline" had expired.

Owner's Response: This proposed finding is irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit and should not be adopted by the Board. Further, the Superior Court has already determined that the Owner had full authority to create and sell licenses to the subject parking spaces. See Ex. 18; Ex. 22, Item 28.

15. At the auction, the five spaces were sold for approximately \$267,500 to four individuals. The prices ranged from \$42,500 to \$65,000. The purchasers included the girlfriend of a Unit Owner/Board member (who was not herself a Unit Owner) and one of the Board of Directors purchased two parking spaces.

Owner's Response: This proposed finding is irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit and should not be adopted by the Board. Further, the Superior Court has already determined that the Owner had full authority to create and sell licenses to the subject parking spaces. See Ex. 18; Ex. 22, Item 28. This entire section of proposed findings of fact by the Appellant represents an offensive example of the Appellant's attempts to misuse and abuse the Board's authority and findings of fact to gain an inappropriate advantage in ongoing litigation before the Superior Court.

The Effect of the Alteration of the Parking Garage

16. Since September 2004, Mr. Harnett's car has been landlocked in space P-112. He cannot move it when space 2 is occupied. (Appellant's Prehearing Statement, Exhibit 6 at pages 2-6.)

Owner's Response: There is conflicting testimony on the maneuverability of space P112 as Mr. Joy testified he did park a car in this space. Further, one individual's parking ability is not relevant to the Board's determination and for purposes of its review of zoning compliance under the Zoning Regulations, the Board does not need to reach a finding on this issue. As members of the Board alluded to during the public hearings, it is the express provisions and required dimensions of the Zoning Regulations that dictate the sufficiency, and legality, of parking spaces rather than general or anecdotal considerations of maneuverability. See June 5, 2007 public hearing transcript at Pages 161-162, 188, 239-240. Even Applicant's expert testified that a person could get in and out of space P112, just not in one turn necessarily.

17. On several occasions, Mr. Harnett's vehicle in space P-116 was scratched when someone brought a shopping cart through it as directed by the sign directing pedestrians through it to the residential elevators.

Owner's Response: *This proposed finding is irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit and should not be adopted by the Board. Further, there is no evidence of record to support this finding.*

18. When spaces 2 and 3 were created, the diagonal lines were painted over and a single line was painted between 2 and 3. There are no end lines painted for either of the spaces. No wheel stop, wheel bumper guard, curb, guard rail, screening, or other obstacle was placed at the endpoint of spaces 2 or 3. (Appellant's Prehearing Statement, Exhibit 6 at page 8). Various measurements were conducted of the aisle width between P-112 and 2 and 3. WHCA's original measurement was stated to be 17 feet. (Appellant's Prehearing Statement, Exhibit 2 at page 10). Mr. Harnett measured the distance and found it to be 16 feet 10 inches. The distance is even less if the user of space pulls forward past the imaginary end line. (Appellant's Prehearing Statement, Exhibit 6 at pages 1, 12-16).

Owner's Response: *There is no clear and credible evidence of record as to the actual use of the limited common elements prior to the creation of parking spaces P2-P3 that can form the basis of a Board finding, nor is it relevant. The Owner agrees that there are no end lines, wheel stops, etc. at the end of spaces P2 or P3, however none is required by law. Notwithstanding the fact that wheel stops or end lines are not required by law, the Owner is willing to provide such measures for parking spaces P2 and P3 and believes that the Board has full authority, pursuant to §3100.4, to accept Owner's offer in this regard without the need for additional action by DCRA and/or the Zoning Administrator. The evidence of record, including the Permit plans, the Owner's measurements and the Appellant's expert's measurements, shows that the referenced access aisle is at least 19 feet, 5 inches wide. See Ex. 18; Ex. 20; Ex. 22, Item 2. Regarding the "distance" if the user pulls forward, such a measurement is not contemplated when issuing a building permit, nor is it enforced through the Zoning Regulations. Therefore, the Board should not adopt this proposed finding and should instead adopt Owner's proposed finding of fact #38.*

19. The exact length of spaces 2 and 3 is unclear. The painted line between spaces 2 and 3 is just over 15 feet, 11 inches. (DCRA Exhibit No. 020.)

Owner's Response: *The Owner does not dispute that the painted line between spaces P2 and P3 is 15 feet, 11 inches. As "non-required" parking spaces, the Zoning Regulations do not contain an explicit minimum length requirement.*

20. Measuring from the north wall at the end of spaces P-112, P-111, and P-110, to the south wall at the end of spaces P-142 and P-143, the distance is 92 feet, 8 inches. Allowing for three required spaces of 19 feet each, and two drive aisles of 20 feet each, there would need to be at least 97 feet total to fit in three such parking spaces and drive aisles.

Owner's Response: *The Appellant's wall-to-wall measurement may be correct, however it, and the purposes for which Appellant are seeking to use this fact are improper and irrelevant. As discussed in detail in Owner's Proposed Order, all parking spaces and access aisles do not need to meet the requirements for "required" parking spaces and all parking spaces in the subject parking garage are not "required". Therefore, this wall-to-wall measurement is*

irrelevant and the Board should instead focus on and make findings with respect to the individual measurements of specific parking spaces and access aisles based on whether the parking space/access aisle being measured is a "required" or non-required space/access aisle.

21. The creation of spaces 2 and 3 results in a parking arrangement that is neither reasonable nor convenient.

Owner's Response: *The evidence of record is conflicting as to the reasonableness and convenience of the subject parking garage, and clearly the Owner disagrees that parking spaces P2 and P3 are unreasonable or inconvenient or create such a parking arrangement or that the Appellant has met his burden of clearly evidencing this fact. Notwithstanding this dispute, however, as discussed in detail in the Owner's Proposed Order, the provision of the Zoning Regulations that requires "reasonable and convenient" parking facilities (11 DCMR § 2116.8) is not applicable to the present case and is only applicable when off-site parking is provided. Therefore, the Board should not adopt this proposed finding.*

22. Upon the creation of spaces 2 and 3, Mr. Harnett's ingress and egress maneuver with respect to space P-112 was rendered nearly impossible. Michael Albers, the expert witness with regard to parking, testified that based on his examination of the parking garage and his knowledge, training, and experience, as supplemented by use of the standard software used to determine accessibility of parking spaces, when a vehicle is parked in space 2, it is almost impossible for a driver of a full size vehicle to get in and out of space P-112. The drive aisle width is simply too narrow and vehicles and columns behind and adjacent to space P-112 prevent a parking/unparking maneuver that can be deemed acceptable.

Owner's Response: *There is conflicting testimony on Mr. Harnett's ability to move his vehicle in and out of parking space P112. The Owner's presented the testimony of Mr. Ken Joy, President of the Washington Harbour Condominium Unit Owners' Association, who stated that he actually attempted the maneuver in and out of parking spaces P112 and was successful in that maneuver with relative ease. However, for purposes of its review of zoning compliance under the Zoning Regulations, the Board does not need to reach a finding on this issue. As members of the Board alluded to during the public hearings, it is the express provisions and required dimensions of the Zoning Regulations that dictate the sufficiency, and legality, of parking spaces rather than general considerations of maneuverability. See June 5, 2007 public hearing transcript at Pages 161-162, 188, 239-240. Further, Mr. Albers testified that it was the column and the wall of the garage that affected the maneuverability of space P112 and that increasing the aisle width to 20 feet would not make a difference.*

23. There is simply not enough distance to create spaces 2 and 3 and comply with the drive aisle width requirements on both sides. In addition, a vehicle in space P-112 has nowhere to turn when spaces 2 and 3, and particularly space 2, are occupied. A vehicle in space P-113 and the adjacent column and storage units prevents a movement in that direction, and there is not enough space in the aisle to allow the vehicle from P-112 to maneuver.

Owner's Response: *The first sentence of this proposed finding is incorrect, and further is a legal conclusion that should not be adopted by the Board as a finding of fact. There is conflicting testimony on the ability to move a vehicle in and out of parking space P112. However, for purposes of its review of zoning compliance under the Zoning Regulations, the Board does not need to reach a finding on this issue. As members of the Board alluded to during*

the public hearings, it is the express provisions and required dimensions of the Zoning Regulations that dictate the sufficiency, and legality, of parking spaces rather than general or anecdotal considerations of maneuverability. See June 5, 2007 public hearing transcript at Pages 161-162, 188, 239-240. The Board should not adopt this proposed finding.

24. The futility of the entry/exit maneuvers in/out of space P-112, was demonstrated further, by Mr. Albers, without contradiction, by use of the computer program “Auto Turn,” a commercially available program that allows the design vehicle to be input into the program and visually track how it can make a turn. Even with multiple back and forth maneuvers and hitting columns, cars, and other barriers, the parking maneuver fails. The exit maneuver is even more impractical than the entry maneuver. Backing out in the same serpentine manner to get to the end bay drive aisle between space 3 and P-107 is unreasonably dangerous and is not recommended or acceptable for ease and safety reasons.

Owner’s Response: *There is conflicting testimony on the ability to move a vehicle in and out of parking space P112. Further, Mr. Albers’ testimony and exhibit did not show that the maneuver failed. However, for purposes of its review of zoning compliance under the Zoning Regulations, the Board does not need to reach a finding on this issue. As members of the Board alluded to during the public hearings, it is the express provisions and required dimensions of the Zoning Regulations that dictate the sufficiency, and legality, of parking spaces rather than general or anecdotal considerations of maneuverability. See June 5, 2007 public hearing transcript at Pages 161-162, 188, 239-240. The Board should not adopt this proposed finding.*

25. Employing “level of service” concepts and standards which are customary in evaluating parking design issues, the creation of spaces 2 and 3 results in a level of service for space P-112 which is lower than an “F” (the lowest recognized standard), down from its previous “B” level, and can be described as “off the charts” for purposes of the level of service analysis.

Owner’s Response: *There is conflicting testimony on the ability to move a vehicle in and out of parking space P112. Further, the level of service analysis is not relevant to determining compliance with the Parking Regulations. Accordingly, for purposes of its review of zoning compliance under the Zoning Regulations, the Board does not need to reach a finding on this issue. As members of the Board alluded to during the public hearings, it is the express provisions and required dimensions of the Zoning Regulations that dictate the sufficiency, and legality, of parking spaces rather than general or anecdotal considerations of maneuverability. See June 5, 2007 public hearing transcript at Pages 161-162, 188, 239-240.*

26. WHCA submitted materials to the BZA previously, which include a drawing prepared with the AutoTurn program. (Appellant’s Prehearing Statement, Exhibit 5.) This document shows that, by WHCA’s own calculations, the car is shown hitting the wall and confirms that this maneuver cannot be carried out.

Owner’s Response: *The document referenced by the Appellant, and included in his Pre-hearing statement was not presented to the Board or entered into the record of this appeal by the Owner. Instead, the Appellant obtained this document, which was a submission in a prior Board case, and entered it into the record. The Appellant was not involved with preparing this document and is in no position to offer comments on the interpretations or conclusions of this document. In addition, it does not show that the maneuver cannot be accomplished. There is conflicting testimony on the ability to move a vehicle in and out of parking space P112. Indeed,*

the Permit plan, which is the subject of this case, illustrates the ability to perform a back-in maneuver into parking space P112. See Ex. 22, Item 2. In any event, for purposes of its review of zoning compliance under the Zoning Regulations, the Board does not need to reach a finding on this issue. As members of the Board alluded to during the public hearings, it is the express provisions and required dimensions of the Zoning Regulations that dictate the sufficiency, and legality, of parking spaces rather than general or anecdotal considerations of maneuverability. See June 5, 2007 public hearing transcript at Pages 161-162, 188, 239-240. The Board should not adopt this proposed finding.

27. The 48 legal spaces in the parking garage are all owned by various Unit Owners. Each space is assessed and real property taxes must be paid to the District. The current assessment is \$50,000.00 per space. Mr. Harnett testified, and it was not disputed, that the five “new” spaces are not assessed and no real property tax is paid on them.

Owner’s Response: *This proposed finding is irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit and should not be adopted by the Board. It also contains legal conclusions that should not be adopted by the Board as a finding of fact.*

The Initial Failure to Seek a Building Permit

28. When WHCA performed the restriping and alteration that created the five parking spaces numbered 1-5, it did not seek or obtain a building permit.

Owner’s Response: *This proposed finding is correct and is substantively the same as portions of the Owner’s proposed finding of facts #5-8. However, this proposed finding fails to include the facts that the Owner has now applied for and obtained the Permit.*

29. On January 4, 2005, the Zoning Administrator caused the issuance of a Notice of Violation and Notice to Abate to WHCA for the unauthorized restriping and alteration within the parking facility. (Statement in Support of Appeal, Exhibit 2.)

Owner’s Response: *This proposed finding is correct and is substantively the same as the Owner’s proposed finding of fact #6. However, this proposed finding fails to include the fact that by letter dated October 23, 2006, DCRA rescinded the violation with regard to 11 DCMR 2117.*

30. Following the issuance of the Notice of Violation and Notice to Abate, counsel for WHCA engaged in an extended series of private communications and correspondence with the Zoning Administrator. Mr. Harnett was not a party to nor was he made aware of the discussions and correspondence.

Owner’s Response: *This proposed finding is correct except that any communications with the Zoning Administrator should not be characterized as “private” as they were simply part of resolving the notice of violation. As stated, this proposed finding is misguided and misleading. After receiving a Notice of Violation, the Owner did engage in communications with DCRA and the Zoning Administrator to determine the nature of the violations and the requested corrective measures. The Owner also appealed the issuance of the Notice of Violation to the Board and to the Office of Administrative Hearings. These actions were legal, proper and reasonable in all respects. Mr. Harnett was not entitled to be a “party” to these*

communications. However, Mr. Harnett had the opportunity and ability at all times to engage in his own communications with DCRA and the Zoning Administrator to discuss the matter and obtain information. The Board should not adopt this proposed finding and should instead adopt Owner's proposed findings of fact #6-7.

31. Sometime in the context of those discussions and correspondence, WHCA's counsel created a drawing which was received as Exhibit 28 at the hearing. On the drawing, WHCA's counsel handwrote a number of things, including designating with diagonal lines "Required Space, in accordance with DCMR 112101.1(12)." WHCA's counsel identified nine parking spaces on the north side of the main drive aisle as "required": P-118, P-119, P-120, P-121, P-122, P-123, P-124, P-125, and P-126. WHCA's counsel identified three spaces on the south side of the main drive aisle as "required": P-128, P-129, and P-130. Other than these twelve spaces, WHCA's counsel did not designate any other "required" parking spaces.

Owner's Response: *The Owner generally concurs with this proposed finding, with one important distinction. Neither the Owner nor the Owner's counsel "designated" parking spaces as "required" because no such "designation" is required by the Zoning Regulations to obtain a building permit. Use of the word "designate" implies that the Owner and/or Owner's counsel took some action to affirmatively grant a certain status to certain parking spaces that did not previously exist. In fact, the Owner "identified" twelve (12) parking spaces that met all requirements for "required" parking spaces as mandated by the Zoning Regulations. Therefore, this proposed finding should not be adopted in its current form and the Board should instead adopt Owner's proposed finding of facts #18-19.*

32. The preparation of Exhibit 28 and the designation of twelve "required" spaces on it was done solely by WHCA's counsel. The Board of Directors was not consulted in connection with the preparation of the drawing or the designation of "required" spaces, and the Board of Directors did not approve those actions. At the time, WHCA was not the owner of any parking spaces in the parking facility. All of the spaces were owned by members of the Condominium. Those owners were not consulted in connection with the preparation of the drawing or the designation of "required" spaces, and those owners did not approve those actions.

Owner's Response: *Neither the Owner nor the Owner's counsel "designated" parking spaces as "required" because no such "designation" is required by the Zoning Regulations to obtain a building permit. Use of the word "designate" implies that the Owner and/or Owner's counsel took some action to affirmatively grant a certain status to certain parking spaces that did not previously exist. In fact, the Owner "identified" twelve (12) parking spaces that met all requirements for "required" parking spaces as mandated by the Zoning Regulations. The Owner and Owner's counsel had full authority to engage in discussions with DCRA and the Zoning Administrator to remedy the Notice of Violation and to pursue and obtain the Permit. Further, there is no evidence of record that the Owner's Board of Directors was not consulted in relation to the actions taken to remedy the Notice of Violation and pursue the Permit. In any event, this proposed finding is irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit. Further, it is not within the purview of the Board to review the alleged "lack of authority" as this has already been properly determined by the Superior Court. This proposed finding should not be adopted by the Board.*

Consideration of ANC 2E of the Issues on this Appeal

33. On October 6, 2006, at a regularly scheduled meeting and with a quorum present, ANC 2E voted to support the position of Mr. Harnett on this appeal. At the meeting, ANC 2E noted its concern that Mr. Harnett's vehicle had been blocked in its parking space for an extended period of time due to the addition of spaces in the parking facility.

Owner's Response: *The Board clearly expressed its position that the action taken by ANC 2E on October 6, 2006 was in relation to a different matter before the Board and that it would not be considered as part of this appeal. See June 5, 2007 public hearing transcript at Pages 73-75. In any event, the action taken by ANC 2E in October 2006 provided only a conclusory statement as to the parking situation and did not address any of the legal issues that are relevant to this case. The Board should not adopt this proposed finding.*

34. In its report dated June 28, 2007, ANC 2E indicated that its position on the matter has not changed and that it remains in support of the position of Mr. Harnett on this appeal.

Owner's Response: *ANC 2E did not provide a "report" on June 28, 2007, but instead provided an additional brief and conclusory letter that its position taken on October 6, 2006 "had not changed". Ex. 24. As stated above, the ANC's October 2006 letter was in regards to a different case before the Board that presented different legal issues. ANC 2E failed to address the substantive issues of that case, let alone the issues presented in this appeal. Further, ANC 2E, despite ample opportunity to do so, never placed the current appeal case on its agenda or considered the issues involved in this appeal in an open forum per its customary practice. See Ex. 26. The Board should not adopt this proposed finding. Nonetheless, should the Board wish to adopt this finding and consider ANC 2E's June 28, 2007 letter or give it "great weight", the Board should proceed to simply acknowledge it and dispose of it with a substantive explanation of the findings and conclusions that the BZA makes on the Appeal.*

Application for and Approval of the Building Permit

35. Mr. Crews testified that the private discussions and correspondence between WHCA's counsel and the Zoning Administrator resulted in a private "settlement agreement" under which WHCA agreed to apply for a building permit and the Zoning Administrator agreed that a building permit would be issued.

Owner's Response: *This proposed finding is not necessary to the Board's determination in this case, as the Permit was pursued and obtained and the issue for the Board's consideration is whether the issuance of the Permit was in violation of the Zoning Regulations. However, it must be noted that this proposed finding is misleading with regard to its use of the word "private". Regardless of the exact words used by Mr. Crews at the public hearing (Appellant does not provide a cite to the quoted language), there was no "settlement agreement" between the Owner and DCRA or the Zoning Administrator that created, removed, altered or modified any provision of the Zoning Regulations or other applicable law. The "agreement" that occurred between the Owner and DCRA and the Zoning Administrator was simply the communication of the decision by the Owner to apply for a building permit instead of appealing the need for a building permit to stripe parking spaces, as the law itself is unclear that a permit is required in that instance. The Board should not adopt this proposed finding.*

36. In reaching agreement with WHCA's counsel, the Zoning Administrator was aware of ANC 2E's position on these issues and that ANC 2E supported Mr. Harnett, but he decided to disregard ANC 2E's position because he felt that "what ANC-2E was concerned with was the requirement that if you were going to change parking, that you should have a building permit." (July 31, 2007 Hearing Trans. at 160.19-161.15.)

Owner's Response: *This proposed finding is irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit and should not be adopted by the Board. The Board is in a position to review the weight of the ANC position on this matter and does not need to review the Zoning Administrator's treatment of the ANC position. Whether the Zoning Administrator was aware or not of the ANC's position is not relevant. Again, there was no "settlement agreement" between the Owner and DCRA or the Zoning Administrator that created, removed, altered or modified any provision of the Zoning Regulations or other applicable law. The "agreement" that occurred between the Owner and DCRA and the Zoning Administrator was simply the communication of the decision by the Owner to apply for a building permit instead of appealing the need for a building permit to stripe parking spaces, as the law itself is unclear that a permit is required in that instance. The Zoning Administrator has a responsibility to correctly interpret and apply the Zoning Regulations, not to follow ANC recommendations—especially ones that are lacking in any substance or relevance to the legal issues involved. The Board should not adopt this proposed finding.*

37. WHCA's application for Construction Permits on Private Property was prepared and signed by its counsel on November 15, 2007, and filed with DCRA on November 17, 2006. (Statement in Support of Appeal, Exhibit 3). The only drawing included with the Application was DCRA Exhibit 002.

Owner's Response: *This proposed finding is correct and substantively the same as Owner's proposed findings #8-10. However, this proposed finding does not acknowledge that DCRA and the Zoning Administrator also relied on additional information, including additional plans and an independent review of the applicable Zoning Regulations, in issuing the Permit. Therefore, the Board should not adopt this proposed finding in its current form.*

38. The Zoning Administrator approved the issuance of the building permit as a matter of right, and Building Permit No. 101019 was issued the same day as the application was submitted, on November 17, 2007. (Appellant's Prehearing Statement, Exhibit 1.) The Zoning Administrator did so without a site visit, and without referring the application to the Department of Transportation, as would typically be the case for parking plans.

Owner's Response: *The first sentence of this proposed finding is factually correct, however, this proposed finding is irrelevant to the Board's determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit and should not be adopted by the Board. The Board is in position to review the relevant information on appeal and does not need to review the Zoning Administrator's actions leading up to his decision on the Permit. DCRA approved the Permit upon review of the Zoning Administrator and the Zoning Administrator was under no obligation to conduct a site visit and had all necessary information to determine that the Permit proposed construction that was permitted by the Zoning Regulations. Appellant cites to no provision of law that requires referral of a building permit application for striping of parking spaces to the Department of*

Transportation. Because this proposed finding is not necessary and is not supported by the law, it should not be adopted by the Board.

39. In determining that the building permit could be issued as a matter of right, the Zoning Administrator did not rely upon DCRA Exhibit 002. He relied upon Exhibit 28, which was not included with the Application for the building permit. Exhibit 28 is a copy of what appears to have originally been a scaled drawing, but the photocopying would eviscerate the scale.

Owner's Response: *This proposed finding is irrelevant to the Board's determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit and should not be adopted by the Board. The Board is in position to review the relevant information on appeal and does not need to review the Zoning Administrator's basis for decision. Nevertheless, DCRA and the Zoning Administrator relied upon the Permit plans, Exhibit 28 and other communications and independent review of the law, as was testified to at the hearing. Further, there is no finite record upon which the Zoning Administrator must rely upon in issuing the Permit. The Board should not adopt this proposed finding.*

40. Spaces 4 and 5 do not meet the minimum vertical clearance requirements of Section 2115.5. (Appellant's Prehearing Statement, Exhibit 6 at pages 10-11.)

Owner's Response: *The Appellant has provided no vertical measurements for parking spaces P4 and P5 and, therefore, has not met its burden of providing information that can form the basis of this proposed finding by the Board.*

This Appeal

41. Mr. Harnett timely and properly noted his appeal on January 12, 2007.

Owner's Response: *This proposed finding represents the decision of the Board on the issue of the timeliness of the appeal.*

42. On June 27, 2007, WHCA's Board of Directors voted unanimously to engage Linowes and Blocher LLP to represent the Association with respect to all zoning and permitting issues related to the parking spaces that are the subject of the Appeal. The Board further indicated that, "As such, the Association has duly authorized Emily J. Vaias, Esquire, Joseph P. Lapan, Esquire and the law firm of Linowes and Blocher LLP to represent the Association with respect to any and all Appeal proceedings before the Board of Zoning Adjustment and all related matters."

Owner's Response: *This proposed finding is irrelevant to the determination of whether DCRA and/or the Zoning Administrator erred in interpreting the Zoning Regulations and issuing the Permit and should not be adopted by the Board. Linowes and Blocher LLP had the authorization of the Owner with respect to all zoning and permitting issues long before June 2007 and the letter provided to the Board on June 29, 2007 was simply to confirm this authorization. Ex. 25. The Board should not adopt this proposed finding.*

RESPONSE TO APPELLANT'S PROPOSED CONCLUSIONS OF LAW

The Appellant's proposed conclusions of law are not reproduced herein, as the Owner has fully addressed the legal issues in this appeal in its Proposed Order, submitted to the Board on September 7, 2007. Instead, the Owner will provide only brief comments on the Appellant's conclusions of law, organized using the Appellant's section headings.

Motion to Compel

In addition to the reasons stated by the Appellant for the Board's denial of Appellant's Motion to Compel, the Board was also very clear that the information sought by the Appellant was not relevant or necessary to the Board's determination of the zoning issues involved in the appeal and that all necessary information to review the Zoning Administrator's decision in this case was available and before the Board. See July 31, 2007 public hearing transcript at Pages 46, 59-60, 78-82. In fact, one Board member agreed with the characterization of the information sought by Appellant as "background noise." July 31, 2007 public hearing transcript at Pages 81-82.

Merits of the Appeal

As outlined in detail in the Owner's Proposed Order, there were no violations of any provisions of the Zoning Regulations with the issuance of the Permit. Appellant does not substantiate its claim that application of the Zoning Regulations in the manner suggested by DCRA, the Zoning Administrator and the Owner results in "chaos." Entities are free to revise parking plans or create new parking spaces as long as they do so in accordance with the Zoning Regulations, which the Owner did in this case.

Application for Building Permit

The Owner's Proposed Order fully addresses the history of this case. Not only is Appellant's discussion in this section irrelevant to the Board's determination on appeal, but also it inaccurately cites to the cost of the striping of the subject parking spaces. The amount referred to by the Appellant included the striping of the subject parking spaces as well as additional work in the subject parking garage.

Section 2100.2

The Owner's Proposed Order fully discusses the Owner's compliance with the plain language of §2100.2. See Owner's Proposed Order, Pages 15-16. §2100.2 does not require the indication of "required" or "non-required" parking spaces and this determination is left to the review of DCRA and the Zoning Administrator at the time an application is before them, which properly occurred in this case. Further, the Appellant makes the mistake of believing that the basis for the issuance of the Permit is for some reason limited to only those materials provided to DCRA on the day of building permit application. DCRA and the Zoning Administrator testified that they relied on additional materials and information, which were properly before them at the time of Permit issuance.

Sections 2100.2, 2100.3, 2117.1, 2117.3

The Owner's Proposed Order addresses in detail the Appellant's claim that the "fabric and framework" of the Zoning Regulations somehow provides the basis for a finding of error by the Board. See Owner's Proposed Order, Pages 13-15. The explicit provisions of the Zoning Regulations were fully followed in this case and are in no way "incompatible" with the ability to add parking spaces to a parking garage subsequent to original construction.

Section 2115.5

The Owner's Proposed Order addresses in detail the vertical clearance issues raised by the Appellant. See Owner's Proposed Order, Pages 10-11. The Appellant has not met its burden of showing error in the issuance of the Permit in this regard.

Section 2116.8 and 2116.9

The Owner's Proposed Order addresses in detail the applicability and the substance of §§2116.8 and 2116.9 of the Zoning Regulations. See Owner's Proposed Order, Pages 12-13. These sections are not applicable in this instance, and in any event the Appellant has not met its burden of showing that the subject parking spaces or the subject parking garage is in any way unreasonable or inconvenient. Appellant's discussion of the placement of a sign within parking space P116 is irrelevant, as this was not the subject of the Permit and is not on appeal.

Section 2117.2

The proper interpretation of the Zoning Regulations applicable to the establishment and maintenance of "required" parking spaces is addressed in detail in the Owner's Proposed Order. The Permit did not in any way reduce the number of "required" parking spaces. The Appellant is incorrect that all 48 originally approved parking spaces met the criteria for "required" spaces, since an 18-foot drive access aisle was apparently approved on the plat and 20-feet is necessary adjacent to "required" spaces. In any event, the decision to originally create any number of parking spaces that met the criteria for "required" parking spaces in no way altered the legal requirement that only one (1) parking space is "required" for each three (3) dwelling units in the W-3 Zone (12 parking spaces in this case). Merely because more than 12 parking spaces originally met the criteria for "required" parking spaces does not mean that more than 12 parking spaces ever were or are "required" per the Zoning Regulations. There has been no change in status of specific individual parking spaces from "required" to "non-required" since the Zoning Regulations do not require such a status designation and since no more than 12 spaces were originally "required" in the first place.

Section 2117.5

The Owner's Proposed Order addresses in detail the Appellant's claim that the access aisles in the subject parking garage are not sufficiently wide in certain locations. See Owner's Proposed Order, Pages 7-10. The Zoning Administrator's interpretation of §2117.5 in this case is consistent with a plain reading of the Zoning Regulations and is supported by the current Acting Zoning Administrator.

Section 2117.7

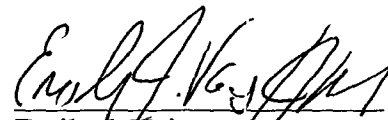
The Owner's Proposed Order addresses in detail the proper interpretation and applicability of §2117.7 in the instant case. See Owner's Proposed Order, Pages 11-12. It is clear from the Zoning Regulations that "private walkways and driveways" are not synonymous with drive access aisles and that all required protections of §2117.7 are provided in the subject parking garage.

"Required" and "Non-required" Parking Spaces

The Owner's Proposed Order addresses in detail the nature of the distinction between "required" and "non-required" parking spaces and the provisions applicable to both. See Owner's Proposed Order, Pages 9-10. The Appellant insists on constantly discussing the "designation" of "required" and "non-required" parking spaces despite the fact that the Zoning Regulations are totally absent of any requirement to make any such "designation." As the Owner has explained time and again, and has been supported by DCRA, the Zoning Administrator and other DCRA expert witnesses, the Zoning Regulations do not seek "designation" of individual "required" spaces, but instead simply dictate a total number of "required" parking spaces, which must in turn meet certain specific provisions of the Zoning Regulations. New non-required parking spaces can be created at any time, as long as they are compliant with the applicable provisions of the Zoning Regulations and do not reduce the total number of "required" parking spaces. This is exactly what the Owner demonstrated to DCRA and the Zoning Administrator in this case. As the owner of the limited common elements where the subject parking spaces were created, the Owner had fully authority to create the parking spaces under District of Columbia condominium law and such authority was upheld by the Superior Court for the District of Columbia in related litigation. See Ex. 18; Ex. 22, Item 28.

Based on the Owner's Proposed Order and this Response, the Owner respectfully requests that the Board reject the Appellant's Proposed Findings of Fact, Conclusions of Law, and Order and instead adopt the Owner's Proposed Order.

Respectfully submitted,


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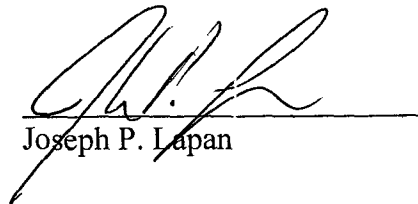
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of September, 2007, a copy of the foregoing Opposition to Appellant's Motion to Compel was sent via first class mail to:

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