

Mary Carolyn Brown
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July 26, 2007

VIA HAND DELIVERY

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: BZA Appeal No. 17631
4319-4321 1/2 Fessenden Street, N.W.
(Square 1655, Lots 17-20)

Dear Members of the Board:

On behalf of the property owner, Dunn Whiskey, LLC, we submit the following response to Appellant's Response to the Board's Request pursuant to 11 DCMR §§ 3121.6 and 3121.7.

First, the Appellant is unable to cite one case from the District of Columbia, the only controlling jurisdiction for the Board of Zoning Adjustment ("BZA" or "Board"). This is significant because the zoning regulations or ordinances for the jurisdictions cited may be different from the District, resulting in a different outcome.

Second, even if the underlying zoning laws being interpreted were the same, the cases cited by the Appellant are easily distinguished from matter before the Board. The cases either appealed actual subdivision plans (as opposed to the building permits challenged here) or deal with whether private streets or alleys in new residential subdivisions should be included in the individual lot calculations. For example, in *Loveladies Property Owners Ass'n v. Barnegat City Service Co.*, the appellants challenged a new residential subdivision where easement strips were reserved for private streets that could be accessed by anyone in the general public. In contrast, the access easement at the Fessenden Street houses would be used solely by the occupants and their licensees. In *Sommers v. Mayor and City Council of Baltimore*, the issue to be decided was just as much controlled by the date a nonconformity was established as the easement question. Consequently, the cases cited by the Appellant are of little, if any, value in analyzing the instant appeal.

Instead, the Board must rely solely on the long-standing interpretations of Zoning Administrator, and past decisions of the Board and the Zoning Commission for the District of Columbia.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17631
EXHIBIT NO. 29

Columbia, the only controlling precedent. Here, the Zoning Administrator has held that driveway easements that are only accessible to the properties they serve do not diminish the required dimensions for lots or yards. The most compelling precedent is the Rosedale development, which clearly approved a common driveway over a panhandle-shaped lot to provide access to ten houses on ten different lots.

Just as significant is the precedent set by the four houses constructed at 2913, 2915, 2917 and 2919 Garfield Street, N.W., Washington, D.C. (Square 2113, Lots 107, 108, 109, and 110). In a subdivision strikingly similar to the Fessenden Street houses, two houses front on Garfield Street, while two other houses are located behind them with access to Garfield by means of panhandle lots. The "panhandles" are burdened by a common driveway easement for the benefit of all four lots. Copies of the property plats and a deed referencing easement is attached hereto. In fact, another example of an access easement that does not affect lot width can be found in the same square as the Dunn Whiskey development. The Appellant's property itself is burdened by an easement four feet wide and 88 feet deep that benefits the adjacent property to the east. A copy of the deed with the easement description is attached.

The Board has routinely recognized the benefit of driveway easements across adjoining project to provide access to required parking spaces. See Property Owner's Opposition to Appeal, Record Exhibit No. 18. Because the Zoning Administrator's approval of the building permits for the Fessenden Street houses is consistent with these long-standing interpretations of this jurisdiction, he committed no error. *See Smith v. District of Columbia Board of Zoning Adjustment*, 342 A.2d 356 (1975)(while the Board is not bound by past decisions, it must consider in its deliberations long-standing interpretations of the Zoning Regulations which have had precedential effect). Moreover, any new interpretation can only be applied prospectively to new applications, and not retroactively to permits already issued. *Id.*

Significantly, the private driveway easement in the Dunn Whiskey development does not affect in anyway the height, bulk, density, or design compatibility of the houses, or the use and enjoyment of adjacent properties – the only complaints lodged by the Appellant. Based on the foregoing, the appeal should be denied.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: Mary Carolyn Brown
Mary Carolyn Brown

cc: Sam Dunn

CERTIFICATE OF SERVICE

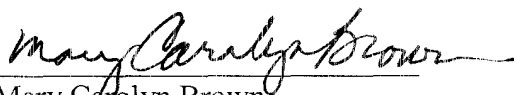
I HEREBY CERTIFY that a copy of the foregoing letter was served this 26th day of July, 2007, by electronic and first-class mail, postage pre-paid, upon the following:

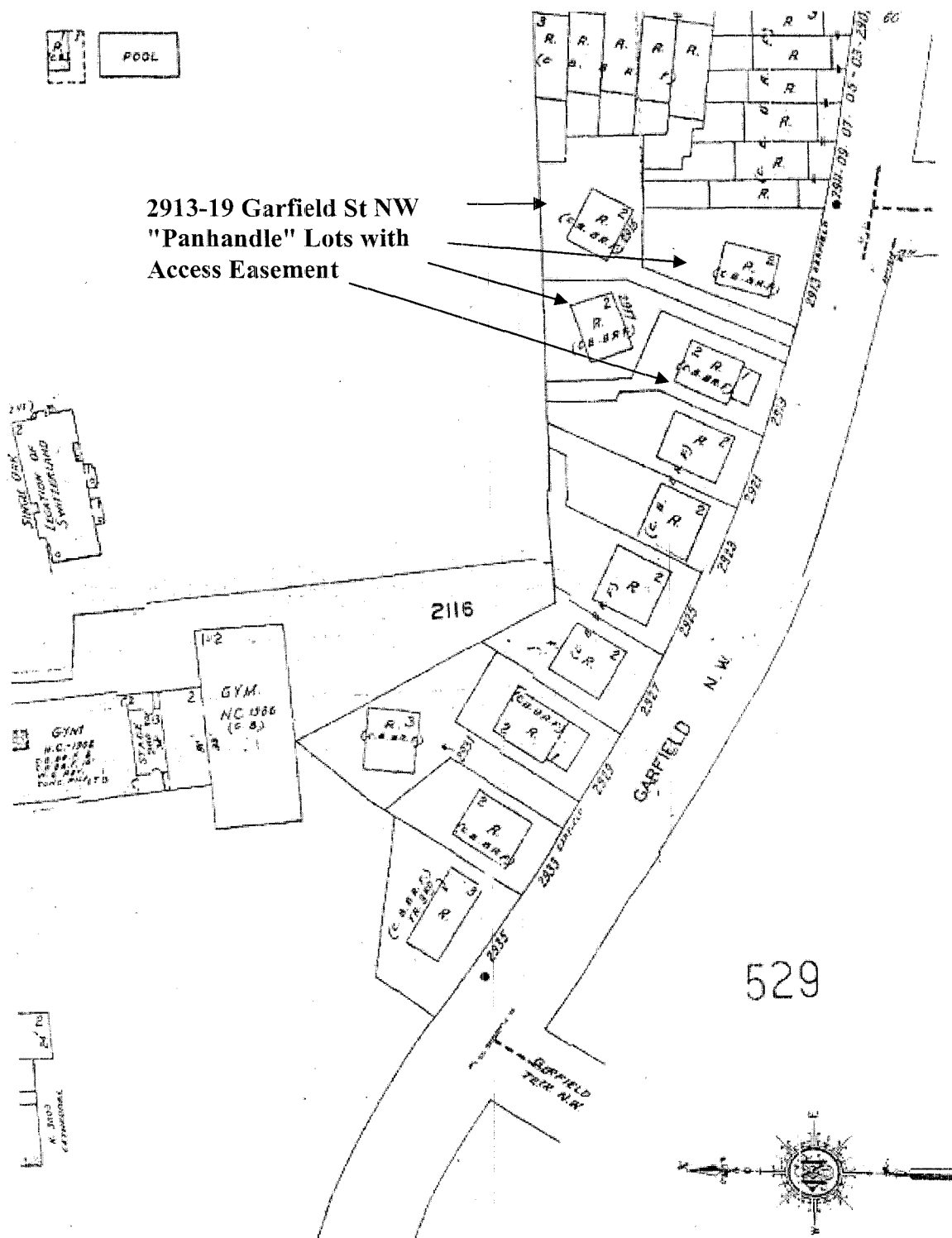
Benjamin W. Boley, Esq.
Goodwin Proctor
901 New York Avenue, NW
Washington, DC 20001
bboley@goodwinproctor.com

Matthew LeGrant
Acting Zoning Administrator
D.C. Department of Consumer & Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20002
matt.legrant@dc.gov

Advisory Neighborhood Commission 3E
Lisner Home
5425 Western Ave. NW
Washington, DC 20008
Attn: Polly King Evans, Administrator
pkingevans@ldhhome.org

Carolyn Sherman, ANC3E03
4341 Ellicott St., NW
Washington, DC 20015
sherman2@bellatlantic.net


Mary Carolyn Brown

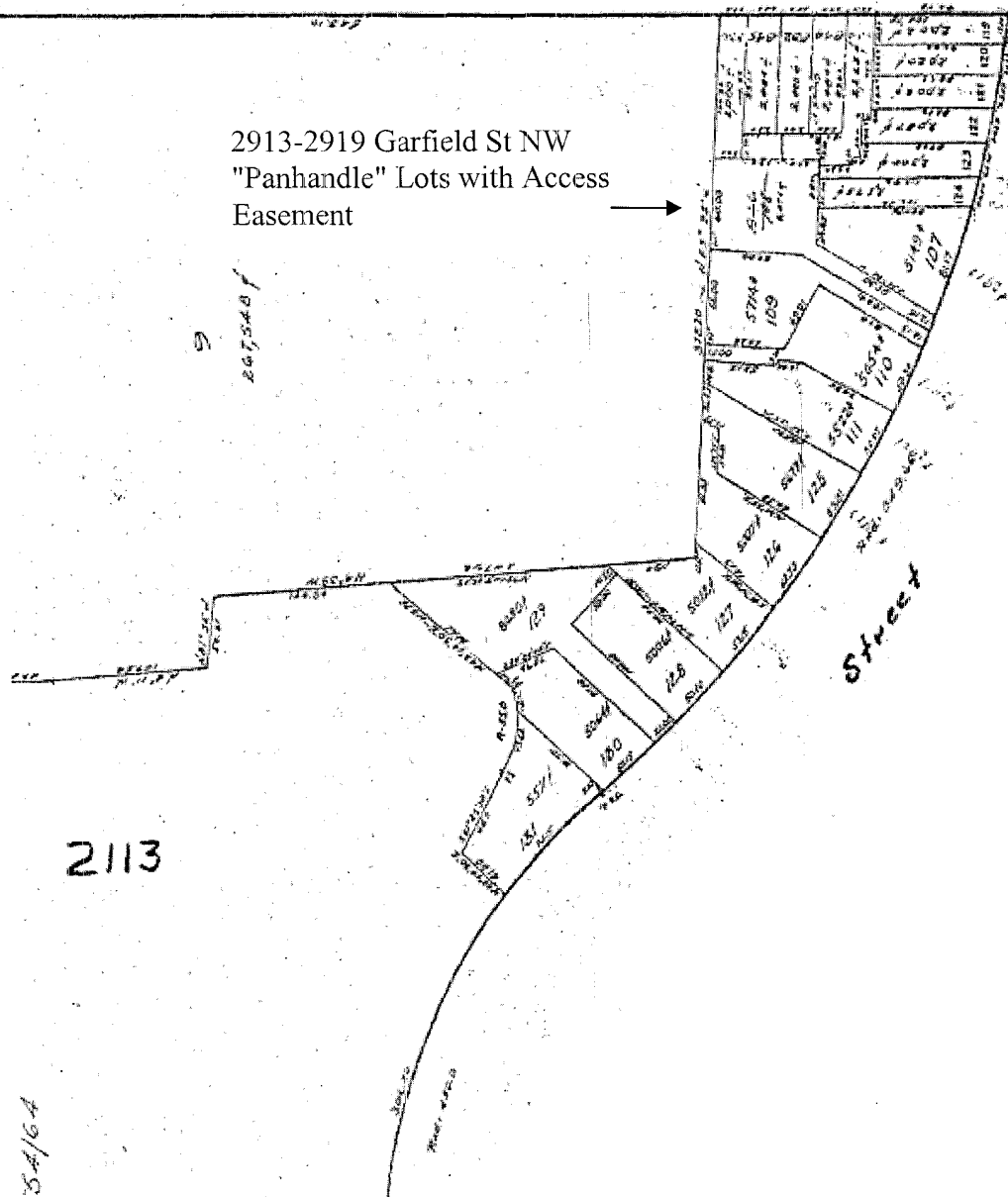


97	96	95	94	93	92	91	90	89	88	87	86	85	84	83	82	81	80	79	78	77	76	75	74	73	72	71	70	69	68	67	66	65	64	63	62	61	60	59	58	57	56	55	54	53	52	51	50	49	48	47	46	45	44	43	42	41	40	39	38	37	36	35	34	33	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1
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29TH

ST

2913-2919 Garfield St NW
"Panhandle" Lots with Access
Easement



8A/6A

1172
AFTER RECORDING PLEASE MAIL TO

Nathan I Finkelstein Esq
7315 Wisconsin Avenue Suite 400 East
Bethesda Maryland 20814

Client Kevin Vasco

Client No 98196
Title Insurance CLTIC

THIS DEED made this 27th by and between Vega Investment Corporation, also known as Vega Investment Corp (a corporation organized and existing under the laws of the District of Columbia), party of the first part and Kevin Vasco (unmarried) party of the second part

WITNESSETH, that in consideration of Ten Dollars and 00/100 (\$10.00) and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged the party(ies) of the first part (do) hereby grant unto the party(ies) of the second part, in fee simple absolute, as sole owner all of that piece(s) or parcel(s) of land together with the improvements, rights, privileges and appurtenances to the same belonging situate in the District of Columbia described as follows, to wit:

(See attached Schedule A)

TOGETHER with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity or otherwise however of the said party of the first part, of, in, to, or out of the said land and premises

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

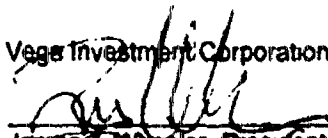
AND Caylor Associates Limited Partnership, A Virginia Limited Partnership, joins herein to convey to the party of the second part all of its interest under an unrecorded lease between the party of the first part as lessor and Vega Investment Corporation as lessee made as of November 1, 1993, covering the property conveyed hereby

98 NOV -6 PM 1:44

9800087790

IN TESTIMONY WHEREOF the said corporation has on the 30th of June 1998, caused these presents to be signed by James J. Wheeler its President and its corporate seal to be hereunto affixed, and does hereby appoint James J. Wheeler its true and lawful attorney in fact to acknowledge and deliver these presents as its act and deed

Vega Investment Corporation a D.C. Corp

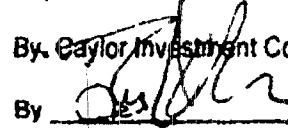

James J. Wheeler, President


Thomas S. Wheeler, Assistant Secretary

Attest

Caylor Associates Limited Partnership.

By, Caylor Investment Corp. General Ptr

By 
James J. Wheeler, V.P.


Thomas S. Wheeler, Secretary

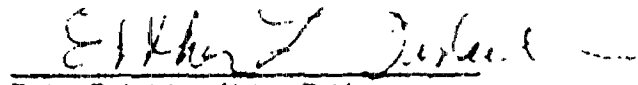
Attest



STATE OF MARYLAND
COUNTY OF MONTGOMERY ss

I, Esther Finkelstein, a Notary Public in and for State of Maryland, do hereby certify that James J. Wheeler, President, Vega Investment Corporation, party to and who is personally well known to me as the person who executed the foregoing and annexed Deed bearing date on the 27th of October, personally appeared before me in said jurisdiction and acknowledged the same to be his act and deed

Given under my hand and seal


Esther Finkelstein, Notary Public

My Commission expires 7/1/00

My Commission expires _____



Commonwealth

Commitment No. 98196

File No. 98196

COMMONWEALTH LAND TITLE INSURANCE COMPANY

Exhibit "A"
Legal Description

Lot numbered 107 in Square numbered 2113 in the subdivision made by Titan Investment Corporation and others, as per plat recorded in Liber 133 at Folio 14, in the Office of the Surveyor for the District of Columbia

Together with a right of way located on adjoining lots 108 and 109 to the west of lot numbered 107 as set forth in the Agreement by and between Hercules Investment Corporation, et al and the district of Columbia dated October 25, 1966 and recorded November 30, 1966 in Liber 12696 at folio 261

Consideration: \$891,000.00

Grantee Address:
4320 Garrison St., NW
Washington, DC 20016

TAX ID NO: 1655 0819

File No: 07-41DP

Return after Recording to:
The Title Group of Virginia
10201 Lee Highway, Ste 160
Fairfax, Virginia 22030

WARRANTY DEED

THIS DEED, made this 12th day of April, 2007, by and between **David Epstein, Trustee of the David Epstein Revocable Trust**, Grantor, and **TODD D. BOLEY and ANN-CHRISTIN V. BOLEY**, husband and wife, Grantee.

WITNESSETH:

That for and in consideration of the sum of Eight Hundred Ninety-One Thousand and 00/100 dollars, (\$891,000.00), and other good and valuable consideration, receipt of which is hereby acknowledged, the Grantor do hereby grant, bargain, sell and convey, in fee simple, with Special Warranty of title, unto the Grantee, as tenants by the entirety with the common law right of survivorship, all that certain lot or parcel of land together with improvements thereon, situate, lying and being in District of Columbia, and more particularly described as follows:

Part of a tract of land called "FRIENDSHIP", being parts of Lots 1, 2 and 4 in the division of the Estate of William Shoemaker in Equity Proceedings No. 17371 of the Supreme Court of the District of Columbia, described as follows: Beginning for the same at a point in the south line of Garrison Street as established and condemned by District of Columbia Cause Proceedings No. 2007 of the Supreme Court of the District of Columbia, and as shown on plat recorded in the office of the surveyor for the District of Columbia in Liber 95 at Folio 43, distant 252.04 feet from the east line of 44th street, as established and condemned by said condemnation proceedings as shown on plat at said surveyors in Liber 95 at Folio 43; and running thence South 175.65 feet; thence East 37.99 feet; thence North 42 degrees 05 minutes East 17.93 feet; thence North 162.34 feet to the South line of Garrison Street, and thence West along said line of said street 50 feet to the place of beginning.

Subject to Right of Way for purposes of ingress and egress over the East four feet front on Garrison Street by the depth of 88 feet for the benefit of the owners of property adjacent on the East.



Note: At the date hereof, the above described land is now known for assessment and taxation purposes as Lot numbered Eight Hundred Nineteen (819) in Square numbered Sixteen Hundred Fifty-Five (1655).

This conveyance is made expressly subject to the easements, conditions, restrictions, and rights of way of record contained in the deeds forming the chain of title to said property.

The said Grantor covenants that he/she has the right to convey the said land to the said Grantee; that he/she has done no act to encumber the same; that the said Grantee shall have quiet possession of the said land, free from all encumbrances except as mentioned herein, and that he/she, the said Grantor, will execute such further assurances of the land as may be requisite.

WITNESS the following signature and seal:

 (SEAL)
David Epstein, Trustee

____ (SEAL)

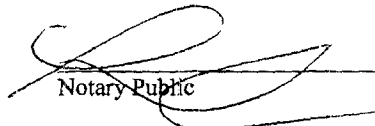
STATE OF *Virginia*

COUNTY OF *Fairfax* to wit:

I, the undersigned Notary Public in and for the State and County aforesaid, do hereby certify that David Epstein, Trustee, whose name is/are signed to the foregoing Deed, dated the 6th day of April, 2007, has acknowledged the same before me in my State and County aforesaid.

Given under my hand and seal this 12th day of April, 2007.

My commission expires:

 (SEAL)
Notary Public

Linda Fink
Notary Public
Commonwealth of Virginia
My Commission Expires 3-31-08