

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



May 7, 2009

James L. Marketos, Esq.
1101 17th Street, N.W., Suite 1100
Washington, D.C. 20036

Re: BZA Application No. 17916 (1220 16th Street, N.W.) The American Hellenic Institute Foundation, Inc.

Dear Mr. Marketos:

The Office of Zoning received your letter (attached) on May 7, 2009, withdrawing the above-cited application. Please be advised that pursuant to subsection 3113.10, of the Zoning Regulations your application is hereby **WITHDRAWN**. No further action will be taken on this application.

The subject application was filed on November 19, 2008, processed and properly noticed for a public hearing to be held on July 21, 2009. The application was self-certified (Exhibit No. 4), as opposed to alternatively being filed under the direction of a Zoning Administrator's referral memorandum. The BZA Self-Certification Form 135 contains specific language regarding the assumed risk inherent in its use. As such, your request for a refund of the application filing fee is denied. If you have any questions relevant to the foregoing please call me on (202) 727-6311.

SINCERELY,

RICHARD S. NERO, JR.
Acting Director, Office of Zoning

Attachment

cc: Jennifer Steingasser, Office of Planning
Chairperson, ANC 2B
Ward Two, Councilmember Jack Evans

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Board of Zoning Adjustment

District of Columbia

CASE NO.17916

EXHIBIT NO.

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

In re the Application of

BZA Application No. 17-916

THE AMERICAN HELLENIC INSTITUTE
FOUNDATION, INC.,

for a Special Exception.

**WITHDRAWAL OF APPLICATION FOR SPECIAL EXCEPTION
AND
REQUEST FOR REFUND OF FILING FEE**

Pursuant to 11 DCMR §§ 3113.10 and 3181.4, the captioned applicant, by
counsel, hereby:

- (1) withdraws its pending application for a special exception; and
 - (2) requests the refund of the \$1,600 filing fee.

The reasons for withdrawal of the application and request for refund of the filing fee are as follows:

Applicant the American Hellenic Institute Foundation, Inc. ("AHIF"), is a not-for-profit foreign policy research and educational institution. It has been the owner of the property in question (1220 Sixteenth Street, N.W.) since late 1993. AHIF purchased the property from a law firm. Since acquiring the property, AHIF has occupied and used the property as business offices and a library for its research and

educational activities. The property's certificate of occupancy as inherited from the prior owner specified the use as "SP Office - law office."

On November 19, 2008, AHIF, by counsel, filed an application to this Board for a special exception and paid a filing fee of \$1,600. The application was filed to change the specified use on the certificate of occupancy to "business offices and library" to conform the certificate of occupancy to AHIF's actual use of the premises.

In 2002, AHIF had applied directly to the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") for a new certificate of occupancy designating the use as "business offices and library." DCRA rejected the application on the ground that AHIF first had to obtain a special exception for the proposed use from the BZA. Only then would the DCRA consider an application for a new certificate of occupancy designating the property as "business offices and library."

Upon reviewing AHIF's current BZA application, Stephen Cochran, an official in the D.C. Office of Planning, questioned the need for a special exception, reasoning that, because the proposed use is already permitted as an SP-office use within the purview of 11 DCRM § 508.1, AHIF did not need to proceed with the BZA application for a special exception. AHIF's counsel explained to Mr. Cochran that the application was being made because of the 2002 directive of the DCRA. Mr. Cochran thereupon encouraged AHIF to seek the opinion of the D.C. Zoning Administrator,

Matthew LeGrant, to confirm that no special exception was required in order to convert the certificate of occupancy to specify the use as "business offices and library."

AHIF made the suggested inquiry and in response received Mr. LeGrant's April 16, 2009, e-mail message giving his opinion that AHIF was entitled to change its certificate of occupancy as of right to the proposed use and did not need to proceed with the BZA application:

Thank you forwarding the copy of the current C of O for 1220 16th St., N.W. My interpretation of the applicable zoning regulations is that the present approved use of "SP office - law office" may be converted to "business offices and library" as a matter of right without the need for a Special Exception from the Board of Zoning Adjustments. This is based on the Zoning Regulation 11 DCMR 501.3 as follows:

501.3 General office use, including chancery, shall be permitted in an SP District as a replacement for office use for international organization, non-profit organization, labor union, architect, dentist, doctor, engineer, lawyer; or similar professional person existing and approved by the Board of Zoning Adjustment or the Zoning Commission or authorized by a validly issued certificate of occupancy prior to January 29, 1999.

You have provided me with the most recent C of O for a "Law Office" use dated 10-7-87. Since this use predates 1-29-99, the replacement General Office Use is permitted.

When informed at the April 28, 2009, public hearing on AHIF's BZA application that, with the benefit of Mr. LeGrant's opinion, AHIF intended to re-apply to the DCRA for a new certificate of occupancy, the BZA granted AHIF's request to

continue the public hearing pending the outcome of AHIF's renewed application to the DCRA. The BZA public hearing was continued to July 21, 2009.

On May 1, 2009, AHIF re-applied to the DCRA for the new certificate of occupancy, specifying the use as "business offices and library." DCRA granted AHIF's application the same day. Now that the new certificate of occupancy is in hand, AHIF can, and hereby does, withdraw its BZA application as permitted under 11 DCMR § 1313.10.

In an April 17, 2009, e-mail, Mr. Cochran, the Office of Planning official, stated that "... it appears that the staff working for a previous zoning administrator incorrectly advised you that you[r] existing occupancy permit could not be converted to the one you desire unless you receive relief from the BZA." Mr. Cochran's comment correctly summarizes why AHIF sought the special exception that ultimately proved unnecessary.

The Board's rules provide that "[t]he Board may authorize the refund of all or a portion of the filing fee if it finds that the application was incorrectly filed at the direction of the Zoning Administrator." 11 DCMR § 3181.4. In light of the foregoing, there are ample grounds for the Board to make the necessary finding for a full refund of AHIF's filing fee, namely, that AHIF's filing was based on the erroneous advice of a

prior zoning administrator.

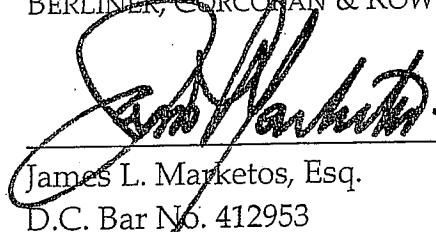
Accordingly, AHIF hereby requests a full refund of the filing fee paid in the amount of \$1,600.

Dated: May 7, 2009
Washington, D.C.

Respectfully submitted,

BERLINER, CORCORAN & ROWE, L.L.P.

By:


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