

BZA Case # 18154

December 29, 2010

2010 DEC 30 AM 10:10

**Response to the Motion to Dismiss filed by the District of Columbia in the
Appeal of the Capitol Hill Restoration Society**

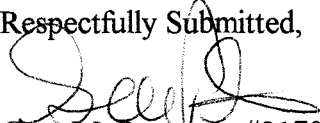
The District of Columbia has filed a motion to dismiss in this Appeal. The grounds for the motion are that 14 DCMR 111.13 forbids this appeal. The section reads as follows:

111.13 The Director's decision pursuant to subsections 111.11 or 111.12 shall be deemed a final decision of the District of Columbia government, and, therefore, there shall not be any further resort to administrative remedies.

The District's argument for dismissal goes to the heart of the Appeal argued in our brief filed on December 20, 2010. The argument is that only the Zoning Commission or the BZA can grant a variance and that DCRA cannot enact a regulation usurping the power of the Commission and BZA. That the Zoning Commission in enacting 11 DCMR 201.1(o) demonstrated that it was aware of 14 DCMR 111 and made it apply to CBRF's in 201.1(o). The Zoning Commission could have chosen to make 14 DCMR 111 apply to other sections of the Zoning Regulations, but didn't. Also, this demonstrates that the Zoning Commission did not believe that it was covered by 14 DCMR 111 and that it had to enact a regulation incorporating it into the regulation. It is also clear from the settlement between the Civil Rights Division of the US Department of Justice and the District that both parties believed that the zoning regulations needed to be amended and that 14 DCMR 111 did not automatically apply in zoning.

For these reasons, the Motion to Dismiss should be considered along with the appeal since they share the same arguments.

Respectfully Submitted,



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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO.

18154

EXHIBIT NO.

26

Board of Zoning Adjustment
District of Columbia
CASE NO. 18154
EXHIBIT NO. 26

Certificate of Service

I hereby certify that a copy of the foregoing brief was served by e-mail, this 29th day of December 2010, to the following:

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