



BEFORE THE ZONING COMMISSION AND
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



FORM 150 – MOTION / REQUEST

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.:

18249

Motion/Request of:

☐ Applicant

☐ Petitioner

☐ Appellant

☐ Party

☒ Intervenor

☐ Other _____

Motion/Request to:

☐ Amend the Relief Sought

☐ Waive Posting / Affidavit of Posting Requirement

☐ Waive Notice Requirement to Shorten Period of Time Case is
Advertised in the DC Register

☐ Accept a Proffered Expert Witness

☐ Allow Non-Authorized Representative to Perform Cross-
Examination

☐ Reopen the Record

☐ Reopen a Hearing (before decision)

☐ Dismiss on the Merits

☐ Postpone

☐ Continue

☐ Correct a Transcript

☐ Waive the following Time Deadline (i.e. 14-day filing deadline):

☒ Other: DISMISS DUE TO MIXEDNESS AND AS A
MATTER OF LAW

Points and Authorities:

On a separate sheet of 8 1/2" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion or request, including relevant references to the Zoning Regulations or Map.

CERTIFICATE OF SERVICE

I hereby certify that on this

14

day of

OCTOBER

, 2011

I served a copy of the foregoing Motion or Request to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of

Planning in the above-referenced ZC or BZA case via:

☐ Mailed letter

☒ BOARD OF ZONING ADJUSTMENT
Hand delivered to District of Columbia

☐ Other _____

Signature:

CASE NO. 18249

Print Name:

BRETT SNIDER

EXHIBIT NO. 16

Firm/Organization:

POTOMAC CREEK ASSOCIATES, L.L.C.

Address:

c/o THE JBG COMPANIES
4445 WILLARD AVE, CHEVY CHASE, MD 20815

Phone No.:

240-333-3600

E-Mail:

bsnider@jbg.com

To be notified of hearing and decision: (Maker of Motion/Request or Authorized Agent)

In the event an authorized agent files a Motion or Request on behalf of the Maker of the Motion or Request, a letter signed by the Maker of the Motion or Request authorizing the agent to act on his/her behalf shall accompany the notice of application, petition, or appeal.

Print Name:

ALLISON PRINCE

Address:

1999 K ST, NW, 5TH FLOOR, WASHINGTON, DC 20006

Phone No.:

202.721.1106

E-Mail:

aprince@goulstonstons.com

Board of Zoning Adjustment
District of Columbia
CASE NO.18249
EXHIBIT NO.16



THE JBG COMPANIES

POTOMAC CREEK ASSOCIATES, L.L.C.
A member of the JBG family of companies

October 13, 2011

Board of Zoning Adjustment
441 4th Street, N.W.
Room 200
Washington, DC 20001

Re: BZA Appeal No. 18249 – Letter of Authorization

Honorable Members of the Board:

As owner of the property located at 420 10th Street, SW, Washington, DC (Lots 870 and 7000, Square 387) (the “**Property**”), I hereby authorize the law firm of Goulson & Storrs, PC to file a motion to dismiss the above-referenced appeal and to take all necessary actions at the Board of Zoning Adjustment concerning the above-referenced appeal.

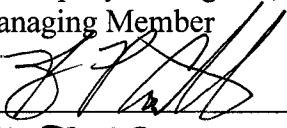
Sincerely,

POTOMAC CREEK ASSOCIATES, L.L.C.

By: JBG/L'Enfant Plaza Mezzanine, L.L.C.
its Managing Member

By: JBG/L'Enfant Plaza Member, L.L.C.
its Managing Member

By: JBG/Company Manager II, L.L.C.
its Managing Member

By: 
Name: BRIAN P. COULTER
Title: MANAGING MEMBER

October 14, 2011

VIA HAND DELIVERY

Meridith Moldenhauer, Chairperson
D.C. Board of Zoning Adjustment
441 4th Street NW, Suite 210S
Washington, DC 20001

Re: **BZA Appeal No. 18249 – Motion to Dismiss**

Dear Chairperson Moldenhauer and Members of the Board:

Potomac Creek Associates, LLC (the “**Owner**”), the owner of the property located at 420 10th Street, SW, Washington, DC (Lots 870 and 7000, Square 387) (the “**Property**”), which is the subject of the above-referenced appeal, hereby moves to dismiss the appeal filed by L’Enfant Colony, LLC (the “**Appellant**”) challenging the issuance of the matter-of-right Building Permit No. B1103503 (the “**Permit**”). The Appellant contends that the Permit should be revoked because it lists the incorrect Lot number, and the Owner misrepresented the nature of the work to be performed under the Permit. As explained below, these arguments have been rendered moot by the re-issuance of the Permit listing the correct Lot number, and the appeal is otherwise premature and not properly before the Board of Zoning Adjustment (“**BZA**” or “**Board**”).

The relationship of the Property, which is owned by Owner, along with Square 387, Lots 866 and 869, and Square 435, Lots 835 and 7000, and the property owned by Appellant, Square 387, Lot 868, is shown on Exhibit A.

On or about January 31, 2011, the Owner filed an application with the Department of Consumer and Regulatory Affairs (“**DCRA**”) seeking a building permit to alter and repair interior portions of its retail promenade and parking garage at the Property. A portion of such application is attached as Exhibit B. DCRA approved the application and issued the matter-of-right Permit on or about April 19, 2011 (attached as Exhibit C). The Appellant filed the instant appeal on or about May 9, 2011. Eleven days later, on or about May 20, 2011, DCRA re-issued the Permit (attached as Exhibit D) to reflect the correct Lot number (Lot 870). Lot 870 had been correctly listed in the Owner’s building permit application but incorrectly entered onto the original Permit as a result of the DCRA computer database’s autopopulating a different lot number (Lot 7000, which refers to portions of Lot 870) based on the address.

D.C. Code § 6-641.07(g)(2) provides that for appeals to the BZA “[t]here shall be a public hearing” However, if the appeal presents solely issues of law and there are no additional “adjudicative facts” material to the BZA’s ruling, a “full-scale evidentiary hearing” is not required. Chiapella v. District of Columbia Bd. of Zoning Adjustment, 954 A.2d 996, 1002 (2008) (quoting Spring Valley Wesley Heights Citizens Ass’n v. District of Columbia Bd. of Zoning Adjustment, 644 A.2d 434, 437 (D.C. 1994)). Furthermore, the “Board shall not consider informal requests for advice or moot questions.” 11 DCMR 3100.7.

The Appellant’s contention that the Permit should be revoked because it identifies the incorrect Lot number was rendered moot by DCRA’s re-issuance of the Permit on or about May 20, 2011. The re-issued Permit contains the correct Lot number – the same number identified by the Owner in its application and the same number the DCRA used in its review of the application. Thus, the Appellant’s primary argument is moot.¹

Likewise, the Appellant’s contention that the work to be performed under the Permit will provide the structural support for a future, non-conforming structure should be dismissed as a matter of law. To have standing, the Appellant must allege, among other things, that the issuance of the Permit has caused it an injury in fact which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Miller v. Dist. of Columbia Bd. of Zoning Adjustment, 948 A.2d 571, 575 (D.C. 2008). The Appellant lacks standing to challenge the issuance of the Permit since the work authorized by the Permit causes no such injury to Appellant.

The Owner is entitled, as a matter-of-right, to the Permit for the limited purpose of alterations and repairs to interior portions of its retail promenade and parking garage. The work to be performed under the Permit does in fact “alter” and “repair” the interior areas of the Property, as listed on the building permit application and Permit. Whether or not the Owner plans to seek future approval for development of the Property is not relevant to the issuance of the Permit. The Appellant will have the opportunity to respond to any subsequent regulatory action concerning the proposed development if and when approval for such a project is sought. See Sisson v. District of Columbia Bd. of Zoning Adjustment, 805 A.2d 964, 969-70 (D.C. 2001). Thus, the Appellant has not suffered an injury in fact and, therefore, lacks standing to challenge the issuance of the Permit.

In addition, the work authorized under the Permit does not affect the zoning on the Property.

¹ As a purely procedural matter, the original Permit was issued on January 31, 2011. However, on May 20, 2011, the Permit was re-issued to account for the mistaken lot number. That re-issued Permit became the operative Permit for the project, superseding the original and making it moot. The Appellant filed no appeal to the re-issued Permit, and for that reason alone, the appeal should be dismissed.

For the foregoing reasons, the Owner respectfully requests that the Board grant its motion to dismiss the appeal and enter an order affirming the DCRA's issuance of the Permit.

Sincerely,

A handwritten signature in black ink, appearing to read 'Allison C. Prince', written in a cursive style.

Allison C. Prince

Exhibit A

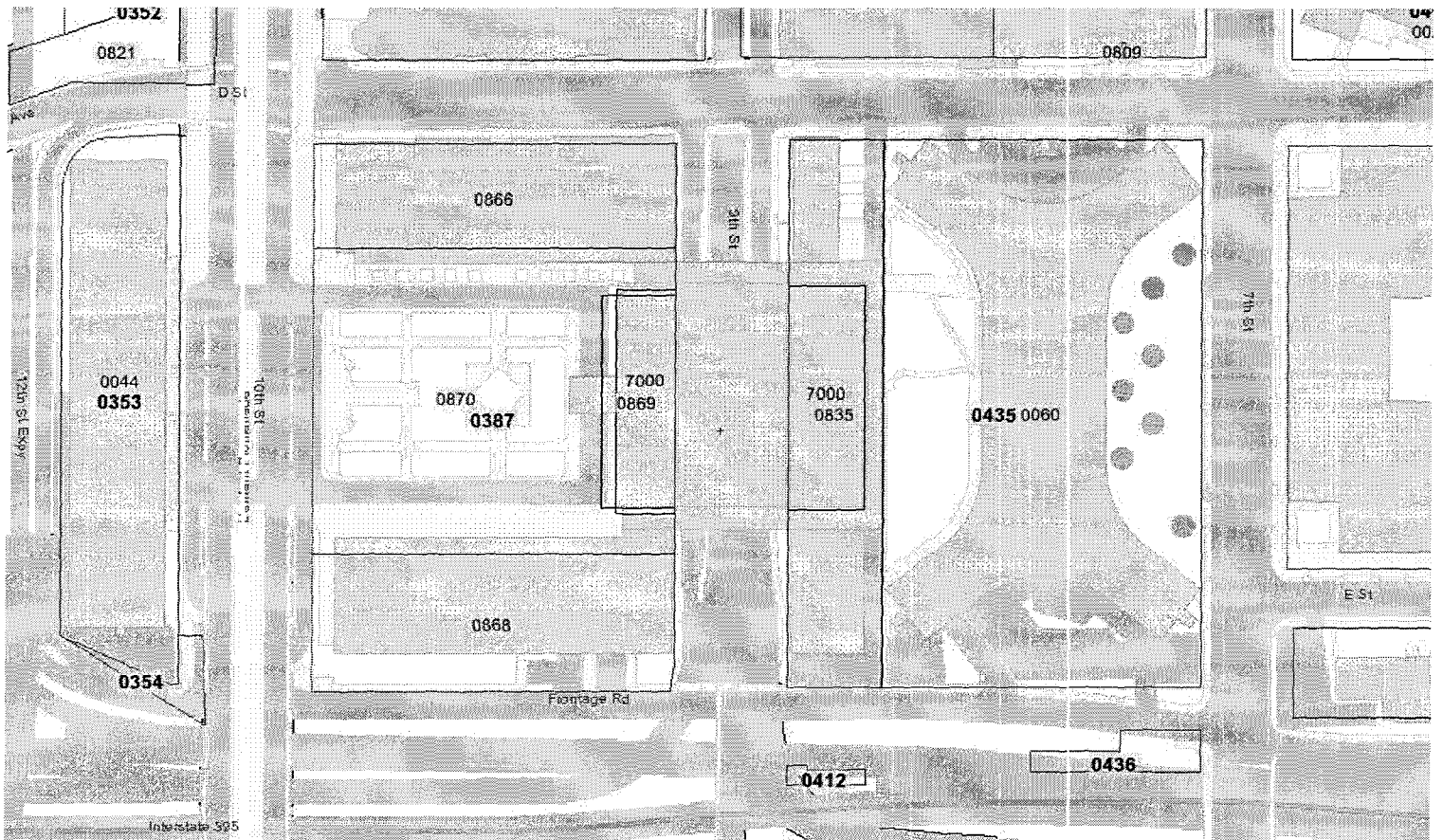


Exhibit B

PRE-FILE NUMBERS		ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER	
N.C.P.C. No:	O.G. No:			13110 3503	By:
H.P.A. No:	S.L. No:	Ward No:	Receipt No:	Date:	Receipt No:



DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Tel 202-442-4589 Fax 202-442-4862

BLRA-33
(Rev. 2004)

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

CLEARANCE TO FILE
By: _____ Date: _____

ERASING, CROSSING OUT, WRITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

1 Address of Proposed Work: 470 10 th ST SW		Suite No.	2 Lot 870	3 Square 387	4 Application Date 1/31/2011
5 Owner of Building or Property POTOMAC CREEK ASSOC		6 Address (include Zip Code)			7 Phone
8 Agent for Owner: (if applicable) COLIN CLARK		9. Address (include Zip Code) 4579 44 th ST NW WDC			10. Phone 669-5589
11. Type of Proposed Work (check all applicable boxes)					
☐ New Building ☐ Addition ☒ Alteration and Repair ☐ Raze Building ☐ Retaining Wall ☐ Fence ☐ Shed ☐ Awning ☐ Garage ☐ Sign ☐ Projection ☐ Other (Specify) _____					

"False statements or misrepresentation of facts on a permit application and/or plans is subject to criminal penalties pursuant to DC law 22-2405"

12. Description of Proposed Work

INTERIOR ALTERATION AND REPAIR TO THE
PROMENADE LEVEL, G1, G2 & G3 LEVELS FOR
STRUCTURAL WORK ONLY

13 Existing Use(s) of Building or Property RETAIL + GARAGE		14 Ex. No of Stories of Bldg 4 Below	15 Ex No of Dwelling Units 0	Official Use Only Miscellaneous PER	
16 Proposed Use(s) of Building or Property RETAIL + GARAGE		17 Prop No of Stories of Bldg 4 Below	18 Prop. No of Dwelling Units 0	By:	Date:
19 Starting Date ASAP	20 Completion Date of work 1YR	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

Exhibit C

Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442-4589 Fax (202) 442-4862

TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557

B

BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK
UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 04/19/2011

PERMIT NO. B1103503

Expiration Date: 04/19/2012

Address of Project: 420 10TH ST SW		Zone: C-3-C	Ward: 2	Square: 0387	Suffix:	Lot: 7000
Description Of Work: INTERIOR ALTERATION AND REPAIR TO PROMENADE LEVEL, G1, G2, AND G3 LEVELS FOR STRUCTURAL WORK ONLY.						
Permission Is Hereby Granted To: Potomac Creek Associates Lp		Owner Address: STE 1208 955 LENFANT PLAZA N SW		PERMIT FEE: \$23,333.00		
Permit Type: Alteration and Repair		Existing Use: Parking Garages - S-2		Proposed Use: Parking Garages - S-2		Plans: Yes
Agent Name: Colin Clark	Agent Address: 4529 44TH STREET, NW WASHINGTON, DC 20016	Existing Dwell Units: 0	Proposed Dwell Units: 0	No. of Stories: 4	Floor(s) Involved: G1/G2/G3	
Conditions/ Restrictions: This Permit Expires If no Construction is Started Within 1 Year or If the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; 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 work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit. Lead Paint Abatement Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based. Include adherence to lead-safe work practices. For more information, go to http://ddoe.dc.gov/Lead and Healthy Housing.						
Director: Nicholas A. Majett		Permit Clerk: Stacie Williams				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557						

Exhibit D

Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442-4589 Fax (202) 442-4862

TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557

B

BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK
UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 04/19/2011

PERMIT NO. **B1103503**

Expiration Date: **04/19/2012**

Address of Project: 420 10TH ST SW		Zone: C-3-C	Ward: 2	Square: 0387	Suffix:	Lot: 0870
Description Of Work: INTERIOR ALTERATION AND REPAIR TO PROMENADE LEVEL, G1, G2, AND G3 LEVELS FOR STRUCTURAL WORK ONLY.						
Permission Is Hereby Granted To: Potomac Creek Associates Lp		Owner Address: STE 1208 955 LENFANT PLAZA N SW			PERMIT FEE: \$23,333.00	
Permit Type: Alteration and Repair	Existing Use: Parking Garages - S-2		Proposed Use: Parking Garages - S-2		Plans: Yes	
Agent Name: Colin Clark	Agent Address: 4529 44TH STREET, NW WASHINGTON, DC 20016		Existing Dwell Units: 0	Proposed Dwell Units: 0	No. of Stories: 4	Floor(s) Involved: G1/G2/G3
Conditions/ Restrictions: This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; 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 work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit. Lead Paint Abatement Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to http://ddoe.dc.gov, Lead and Health/ Housing.						
Director: Nicholas A. Majett		Permit Clerk: Stacie Williams				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557						