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**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**
441 4th Street, N.W.
Washington D.C. 20001

Appeal of Larry Heyman

Appeal No. 18249

DISTRICT OF COLUMBIA'S PRE-HEARING STATEMENT

The Appellee, the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA"), by and through undersigned counsel, respectfully submits its pre-hearing statement in opposition to the appeal filed by Larry Heyman on May 9, 2011.¹

This appeal concerns DCRA's issuance of Building Permit no. B1103503 on April 19, 2011 to Potomac Creek Associates. The scope of work for the building permit is "interior renovation and repair to promenade level, G1, G2, and G3 levels for structural work only" at 420 10th St., SW ("the Property"), which is a part of L'Enfant Plaza.

Appellant complains of two alleged errors with respect to the permit. First, that the building permit reflects the wrong lot number for the Property. Second, that the applicant misrepresented the nature or scope of work to be performed, because the proposed structural work "may" provide support for the construction of a building in the future. This appeal must be dismissed as the two allegations of error claimed by Appellant are moot and premature, respectively. Further, the work approved under the permit is limited to interior, structural work

¹ On the appeal form filed May 9, 2011, Mr. Heyman represents himself as the Vice President of The Old Colony Company and Administrative Manager of L'Enfant Colony, LLC. It is unclear whether Mr. Heyman filed this appeal on behalf of one or both of those entities.

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that does not change the use of the Property. Accordingly, there is no zoning error for the Board to consider as the permit does not implicate any provision of the Zoning Regulations.

ARGUMENT

1) The permit does not violate any provision of the Zoning Regulations

The building permit is explicitly limited to interior, structural work. *See* Intervenor's Letter of October 14, 2011 ("Intervenor") at Exhibit ("Ex.") C. Specifically, the plans approved by DCFA reflect that the scope of work includes replacing portions of concrete slab and strengthening existing columns. This work does not change any exterior aspect of the Property or the use. Accordingly, the permit does not authorize any work that is in violation of the Zoning Regulations.

In this case, and in like cases, this permit application was not subject to zoning review. As the Zoning Administrator has previously explained to the Board, DCRA's internal operating procedures provide that permit applications, where the work being done is limited to interior renovations that do not change the use of the building, are not routed to the Office of the Zoning Administrator for review. *See* Transcript of September 28, 2010 at p. 296 (Appeal No. 18103 of ANC 8E). The Zoning Administrator does not review the application in such cases because the scope of work does not implicate the Zoning Regulations.

2) The issue concerning the lot number is moot

Appellant points out that the original building permit was printed reflecting the lot number of the Property as "7000" and not "387". *See* Intervenor Ex. C. Based on this, Appellant has invented an interesting story- that this led the Zoning Administrator to review false site information and ultimately approve a building permit that should not have otherwise been issued. Of course, this story is entirely untrue and does not follow logically. First, the erroneous

lot number only appears on the permit itself, which is printed only after all of the reviews have taken place. Second, as explained above, the Zoning Administrator did not review this application.

Further, after the lot number issue was brought to the attention of DCRA's permit staff, the permit was reissued reflecting the correct number, thus rendering moot any claim of error.

See Intervenor Ex. D.

3) Appellant's claim of error based on the possibility of future construction is premature

Lastly, Appellant claims that the structural work approved under the permit may at some point in the future support the construction of a building that may be non-conforming. An allegation of error based on the possibility of future events is speculative and premature. If and when plans for additional construction at the Property are submitted to DCRA, they will receive the appropriate reviews. Whether or not those plans exist does not affect the permit holder's ability to exercise its rights under Building Permit no. B1103503.

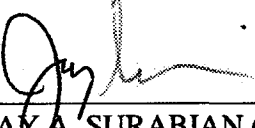
For these reasons, the appeal must be dismissed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing was served by email, this 17th day of October 2011, to the following:

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