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**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**APPEAL OF
WALTER PARRS, ET AL**

**BOARD APPEAL NO. 18257
HEARING: NOVEMBER 1, 2011
PRELIMINARY DECISION: NOVEMBER 8, 2011
ANC 2E**

INTERVENOR'S RESPONSE TO APPELLANTS' POST-HEARING SUBMISSION

In response to the Appellant's Post-Hearing Submission, Intervenor Euromarket Designs, Inc., d/b/a CB2 ("CB2") submits the following:

1. All parties agree that the subject building (the "Building") is not a non-conforming structure. The regulations set forth in 11 DCMR 2001.3, therefore, do not apply here.
2. The Board's determination that the elevator is a roof structure does not make the Building non-compliant. As shown in the record, there are two other roof structures on this portion of the Building that were erected with the original construction of the Building - the garage ventilation shaft at the northeast corner of the Building and the mechanical penthouse along the east wall of the Building. The Board's determination that the elevator is a roof structure is consistent with the fact that the other roof structures were previously approved and permitted for this portion of the Building. Therefore, nothing about the Board's determination changes the legal status of the Building. It is too late to challenge any determinations made by the permitting officials when the Building was approved in 1989.
3. The Appellant's interpretation of the *Kalorama* case is incorrect. In *Kalorama*, the Board wrote that the term "exterior walls. . . has not been interpreted to apply to a side wall constructed to the lot line of an abutting property. . . Accordingly, what distinguishes an exterior wall for zoning purposes is not whether it is exposed to the elements, but whether it is setback from a property line." This language does not limit the Board's ruling in *Kalorama* to instances

only involving party walls as the Appellant argues. Based on *Kalorama* and the Zoning Administrator's consistent application of that case, the north and east walls of the Building are not exterior walls and, therefore, the roof structures are not required to be set back from those walls.

4. The question of whether, as an accessory structure, the elevator is required to have a 15-foot rear yard is not now germane. In the first place, that specific issue was never raised in the record or as part of the appeal. In the second place, the Board has voted to find that the elevator structure is not an accessory building.

For all of the reasons set forth below, and on the basis of the full and complete record of the case, Intervenor urges the Board to find that the Zoning Administrator correctly applied the provisions of 11 DCMR in approving the permits at issue and that the appeal should be denied.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: *Leila M. Jackson Batties*
Leila M. Jackson Batties, Esq.
Paul J. Kiernan, Esq.

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, DC 20006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of December, 2011, a copy of the Intervenor's "Response to the Appellant's Post-Hearing Submission" in **BZA Appeal No 18257**, was sent to the following persons:

Ruthanne G. Miller, Esq.
Sullivan, Styles & Barros, LLP
1990 M Street, NW, Suite 200
Washington, DC 22036
Via E-Mail: rmiller@ssblawfirm.com

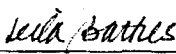
Melinda M. Bolling, Esq.
General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, SW
5th Floor
Washington, DC 20024
Via E-Mail: melinda.bolling@dc.gov

Jay Surabian, Esquire
Assistant Attorney General
Office of the Attorney General
941 North Capitol Street, NE, Suite 9400
Washington, DC 20002
Via E-Mail: jay.surabian@dc.gov

Mr. Matthew LeGrant
Zoning Administrator
Department of Consumer and Regulatory Affairs
1100 4th Street, SW -- Room 3100
Washington, DC 20024
Via E-Mail: matthew.legrant@dc.gov

Advisory Neighborhood Commission 2E
c/o Commissioner Ron Lewis, Chair
3265 S Street, NW
Washington, DC 20007
Via E-Mail: anc2e@dc.gov; ron.lewis@anc.dc.gov

Commissioner Bill Starrels, SMD ANC 2E05
3265 S Street, NW
Washington, DC 20007
Via E-Mail: bill.starrels@anc.dc.gov



Leila M. Jackson Batties