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Bar Memberships: DC, MD

June 11, 2012

Via E-Mail bzasubmissions@dc.gov

D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

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2012 JUN 11 PM 2:08

Re: **BZA Case 18330; FCP Champlain, LLC Application for Special Exception and Variance Relief for 2337 Champlain St., N.W. (Lot 887, Square 2563)**

Dear Members of the Board:

The Erie Condominium Association ("Erie") hereby objects to the filing by FCP Champlain, LLC ("Applicant"), dated June 5, 2012, in BZA Case 18330. The Applicant submitted an "Updated Draft Order (Findings of Fact and Conclusions of Law)" in response to a request by the Chairman at a special public meeting on May 22, 2012. At that time, the Chairman asked for the Applicant to submit an order "in light of the findings" made by the Board on that date. The Erie hereby moves to strike the Applicant's filing, dated June 5, 2012. In the alternative, Erie opposes the Applicant's filing pursuant to 11 DCMR § 3121.7.

Both parties in this case submitted proposed findings of fact on April 17, 2012, and then submitted responsive comments on April 24, 2012. These filings comported with 11 DCMR § 3121.2 and were ordered by the Board. The Applicant should not have been provided with another opportunity to revise its proposed findings. Notably, the Board did not state that the Erie, as a party in opposition to the Application, could also submit additional findings for consideration. The latest submission by the Applicant, on June 5, 2012, is inconsistent with the procedures contemplated by the Zoning Regulations. Those procedures are intended to provide opposing parties with a full and fair opportunity to participate in contested proceedings.

The Erie further objects to the Applicant's latest submission because that filing did not reflect the actual comments, deliberations and findings of the Board at the special public hearing on May 22, 2012. For example, paragraph 44 of the latest proposed order includes new factual findings regarding the impact of the Subject Building upon property values at the Erie. The Board did not make these new findings during the special public hearing. The Board did not offer any detailed findings or discussion regarding the likely impact of the

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Subject Building upon property values next door, and the Board did not analyze the evidence in the manner presented in paragraph 44. As such, these revisions were not updates reflecting the Board's deliberations.

The Applicant's unmarked changes to the earlier document merely reflect edits by the Applicant, rather than revisions to incorporate the deliberations and stated findings of the Board. All of the changes were improper and untimely.

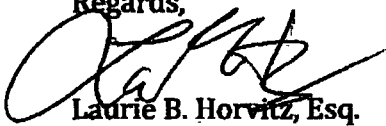
Notably, the Board made several significant findings during the hearing that were not reflected in the "updated" submission by the Applicant. If the Board wants parties to submit findings that reflect actual deliberations, then those findings should accurately reflect *all* of the comments and reasoning articulated. For example, the Chairman offered findings that the Applicant's additional height is permitted by 11 DCMR § 1402.1, due to affordable housing on the site. The Applicant contends that the relevant provision in Section 1402.1 is inapplicable here. The "updated" order should have accurately reflected the Board's stated findings, even if the Applicant maintains that particular findings by the Board are legally incorrect.

For these reasons, the Erie asks the Board to disregard and strike the Applicant's submission, dated June 5, 2012.

The Erie further opposes the Applicant's filing on June 5, 2012 for the reasons set forth in the Erie's earlier submissions in this case. The Erie expressly incorporates and restates by reference its own proposed findings of fact, dated April 17, 2012, and its written comments on April 24, 2012. As the Erie asserted in those earlier filings, the Applicant's proposed findings do not properly and accurately characterize the evidentiary record, the arguments of the parties, or the request of Mr. Wiedis to participate as a party. The evidence in this case does not support the Applicant's proposed findings of fact and conclusions of law.

Thank you for your consideration of this submission.

Regards,



Laurie B. Horvitz, Esq.

On behalf of the Erie Condominium Association

Cc: (via mail)

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