

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

David W. Briggs
202.828.5001
David.briggs@hklaw.com

May 20, 2015

Via IZIS

Board of Zoning Adjustment
For the District of Columbia
441 4th Street, N.W., Suite 200S
Washington, D.C. 20001

**Re: BZA Case No. 18881 – Nando’s of Woodley Park, LLC
Applicant’s Response to WPCA Submission**

Dear Board Members:

On behalf of Nando’s of Woodley Park, LLC (“Applicant”), we submit herewith our response to the opposition filed by the Woodley Park Community Association (“WPCA”) on May 13, 2015.

First, the WPCA submission is untimely and should be dismissed. The Applicant served its Motion for Reconsideration of Condition No. 5 on WPCA by first-class mail on May 1, 2015. Any response to a motion must be submitted within seven calendar days, plus an additional three days if the paper is served by mail. *See* 11 DCMR §§ 3121.7, 3110.1 - 3110.3. Thus, WPCA response was due no later than Monday, May 11, 2015. Here, however, WPCA files its submission two days late on May 13, 2015. While WPCA suggests in a footnote that it did not receive the Applicant’s motion until May 9 by email, the Applicant properly mailed the motion to WPCA at its designated post office box listed on its website. *See* <http://www.wpcaonline.org/>. We note that this is the same address that the Board used to serve WPCA with a copy of the order. *See* Exhibit 69 in BZA Case No. 18881.

Second, in the alternative, if the Board accepts WPCA’s opposition statement, the Applicant notes that WPCA mischaracterizes the Board’s rationale for imposing a five-year time limit. It was not to address the concerns over the potential adverse impacts of adding another eating establishment, but rather to prevent a “typical” fast food establishment from potentially

replacing Nando's without the need for seeking special exception relief. In deliberating on the case, the chairman stated as follows:

I think we need to be very limiting. I think one of the driving forces for our decision or my recommendation for a decision here is that this restaurant, Nando's, is not a typical what we call fast food [establishment]. And so I would be very cautious that we would [not] grant relief that would run generally for any kind of fast food restaurant to come into this place. So I think that we need to limit the relief to some type of condition. Whether or not -- I don't think that we're able to say that it can only be, the relief can only be for a Nando's or this Nando operation, but I think that we do have the ability to limit the term, the time limit of this operation. And so I would think that maybe a, and I don't know, and I don't have it in my record here what the term length of the lease was. But I would be willing to certainly put a speed bump for when the applicant has to come back to this body, making sure that they, one thing that we see. When we put speed bumps in, it has a different tender on how relief is granted and how applicants act. A lot of times they don't start adhering to the conditions until they have to come back in front of this Board. I mean that's, it's some of the things that we saw. So putting a speed bump here, I think, would be very helpful, and I'm suggesting maybe we do a speed bump of five years on any relief.¹

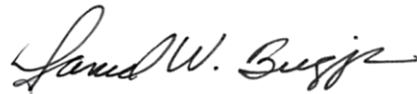
Thus the intent was not to prevent Nando's from benefitting from the relief the Board granted, which was supported by Advisory Neighborhood Commission 3C. Unfortunately, as explained in our motion for reconsideration, limiting the validity of the approval to five (5) years from the effective date of the Order does just that: Nando's cannot take advantage of the approval. Significantly, the Board recognized that use of the term of the lease might be an appropriate way to fix the term of validity of Board's BZA order. But unfortunately, because the validity of the BZA order would be significantly shorter than the term of the Applicant's lease, then, without relief from that condition as noted in our motion for reconsideration, it will practically prevent the Applicant from being able to proceed with the project, an outcome not sought or supported by the ANC.

¹ BZA Meeting Transcript, February 10, 2015, at 11-12.

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The Applicant therefore urges the Board to impose either a 20-year time limit or the alternative conditions listed in Applicant's May 1 letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David W. Briggs", with a stylized flourish at the end.

David W. Briggs

DWB/rcf

cc: Karen Thomas, Office of Planning (via email)

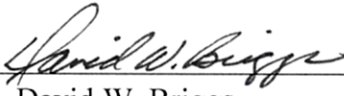
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing letter was served by electronic mail and U.S. mail on May 20, 2015, on the following persons and parties:

Peter Brusoe, President
Woodley Park Community Association
P.O. Box 4852
Washington, D.C. 20008
pwbrusoe@gmail.com

Chairperson Advisory Neighborhood Commission 3C
P.O. Box 4966
Washington, D.C. 20008

Single Member District Commissioner 3C- 01
Advisory Neighborhood Commission 3C
2829 Connecticut Avenue, N.W.
Washington, D.C. 20008
3c01@anc.dc.gov

By: 
David W. Briggs