

DISTRICT OF COLUMBIA COURT OF APPEALS

TIBER ISLAND COOPERATIVE
HOMES, INC., et al.

Petitioners,

vs.

DISTRICT OF COLUMBIA
ZONING COMMISSION,

Respondent,

MARINA VIEW TRUSTEE, LLC,

Intervenor.

)
Case No. 07-AA-1280

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**CONSENT MOTION FOR LEAVE TO FILE
NOTICE OF INTENTION TO INTERVENE OUT OF TIME**

Pursuant to Rule 27 of the Rules of the District of Columbia Court of Appeals, Marina View Trustee, LLC (“Marina View”) hereby seeks the Court’s leave to file the accompanying Notice of Intention to Intervene beyond the deadline provided under the Rules for filing such a notice. In support of this motion, Marina View states as follows.¹

1. Marina View is the owner of the property that is the subject of this appeal, and was the applicant before the District of Columbia Zoning Commission (“Commission”) in the administrative proceedings related to this matter, at the completion of which the Commission issued Order No. 05-38 (“Commission’s Order”), which Petitioners challenge herein. Pursuant to Rule 15(d), Marina View is permitted to intervene, as of right, as a party respondent in the above-captioned case.

¹ In accordance with Rule 27(b)(4) regarding consent or opposition to motions for a procedural order, Marina View represents that it has secured the consent of all other parties to the relief requested herein.

ZONING COMMISSION
District of Columbia

CASE NO. 05-38
ZONING COMMISSION
District of Columbia
CASE NO. 05-38
EXHIBIT NO. 81
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2. Marina View did not file a Notice of Intention to Intervene until this point because, contrary to the relevant rules, as discussed below, it was not served with a copy of the Petition for Review (“Petition”) that the Tiber Island Cooperative Homes, Inc. (“Tiber Island”) and Paul Greenberg (collectively, “Petitioners”) filed on November 26, 2007, until more than two months later, on January 31, 2008.

3. Rule 15(c) states, in pertinent part, that “[a]t the time of filing [a petition], the petitioner must (1) serve, or have served, a copy on each party admitted to participate in the agency proceedings, except for the respondents; and (2) file with the Clerk a list of those so served.” Accordingly, Petitioners were required to serve the Petition upon Marina View, among others, and to file a list of those served. Petitioners, however, failed to comply with either of these requirements.

4. Had Marina View been served as required with the Petition, it would have been *permitted as of right* under Rule 15(d) to file a Notice of Intention to Intervene on behalf of the Commission as Respondent, but would have been required to file it by on or about December 26, 2007.

5. Not having been served, Marina View was unaware that this Court’s review of the Commission’s Order has been sought. Issued on October 18, 2007, the Commission’s Order is of great significance to Marina View, as it approved Marina View’s planned unit development (“PUD”) and zoning map amendment of Lots 50 and 853 in Square 499 in Washington, D.C. (“the Property”). Since that time, Marina View has released its architects and design professionals to proceed with the preparation of construction-related documents in reliance on the PUD and zoning map amendment approved by the Commission. Marina View has incurred

significant costs in the preparation of those documents. Marina View has therefore been greatly prejudiced by Petitioners' failure to serve the Petition on Marina View as required by Rule 15(c).

CONCLUSION

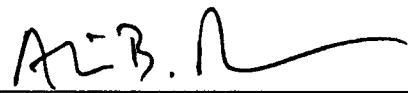
For the foregoing reasons, Marina View respectfully requests that the Court grant it leave at this time to file the accompanying Notice of Intention to Intervene.

Dated: February 6, 2008

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

By:



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Attorneys for the Intervenor, Marina View
Trustee, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this the 6th day of February, 2008, I caused a copy of the foregoing Consent Motion for Leave to File Notice of Intention to Intervene Out of Time, to be sent by first class U.S. mail, postage prepaid, to the following counsel of record:

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