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December 8, 1998

BY HAND

'98 DEC -8 P1:10
OFFICE OF ZONING
DISTRICT OF COLUMBIA

Ms. Sheila Cross Reid
Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W., Room 201
Washington, D.C. 20001

Re: BZA Appeal No. 16404
Motion To Strike

Dear Ms. Reid and members of the Board of Zoning Adjustment:

On behalf of Jack Milton Fields the owner of the property which is the subject of the above-referenced appeal, we have filed a motion to strike portions of the appellant's prehearing statement and attachments thereto, which has been served on the Capitol Hill Restoration Society ("CHRS"). We request an opportunity to the motion.

I appreciate your consideration.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler

cc: Capitol Hill Restoration Society
Gladys Hicks, Office of the Zoning Administrator

BZA
CASE No. 16404
EXHIBIT No. 15

Board of Zoning Adjustment
District of Columbia
CASE NO.16404
EXHIBIT NO.15

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal of Capitol Hill Restoration Society

BZA Appeal No. 16404
Hearing Date: December 16, 1998

INTERVENOR'S MOTION TO STRIKE

For the reasons stated in its motion *in limine*, intervenor, Jack Milton Fields, moves the Board of Zoning Adjustment to strike those portions of the statement of the appellant, the Capitol Hill Restoration Society ("CHRS"), that reference the testimony in Application No. 16370 as well as the transcript portions attached to the prehearing statement:

This is an appeal pursuant to 11 D.C.M.R. §§ 3105.1 and 3200.2. Appellant, the Capitol Hill Restoration Society seeks review of the February 5, 1998 home occupation permit issued to Jack Milton Fields. The home occupation permit authorizes Mr. Fields, at that time the contract purchaser of the property located at 434 New Jersey Avenue, S.E., to use the premises for his government affairs/strategic planning consulting business, with one employee. The premises are zoned CAP/R-4.

As stated in the motion *in limine*, already filed with the Board, CHRS cannot legally rely on any evidence adduced after the home occupation permit was approved by the Zoning Administrator. Again, as the Corporation Council has previously advised the Board (*see e.g., Appeal Nos. 15992,* 15993),

> The burden of proof in this appeal rests with the appellants, and, if no evidence is presented in opposition to the appellants' case, the appellants shall not be relieved of this responsibility. 11 DCMR § 3107.7 and 3324.3. The appellants must show, applying the applicable law to the relevant facts, that the C of O was improperly issued.

* * *

> [T]he review of the instant matter would be limited to evidence that existed before the issuance of the C of O [at the time it was issued]. While what [the] Zoning [Administrator] knew, and when, is of relevance here, the ultimate issue is whether [the] Zoning[] [Administrator's] issuance of the C of O was correct given the information presented to it before the [date on which the C of O was issued.]

The only information which is relevant to this appeal is the information presented to the Zoning Administrator when a home occupation permit was issued to Mr. Fields in February 1998 and not any information developed since that date. Accordingly, the portions of the prehearing statement submitted by CHRS and the attachment thereto should be struck.

Conclusion

For the above reasons, intervenor respectfully requests that the Board grant its motion.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI



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