ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
ATTORNEYS AT LAW

ATLANTA
BOSTON
CHICAGO
LOS ANGELES
MINNEAPOLIS
ORANGE COUNTY
SAINT PAUL
WASHINGTON, D.C.

SUITE 1200
1801 K STREET, N.W.
WASHINGTON, D.C. 20006-1301
TELEPHONE (202) 775-0725
FACSIMILE (202) 223-8604
TELEX 4931197 RKMC

RICHARD B. NETTLER
(202) 775-0725

March 22, 2000

BY HAND

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

'00 MAR 22 P12:15
OFFICE OF ZONING
DISTRICT OF COLUMBIA

Re: BZA Appeal No. 16404

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

I have enclosed for your consideration the intervenor's opposition to the motion for reconsideration filed in the above-referenced matter.

I appreciate your consideration.

Sincerely,

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

Richard B. Nettler

cc: Mr. Lyle Schauer, Capitol Hill Restoration Society
Mr. Jack Milton Fields

#27

Board of Zoning Adjustment
District of Columbia
CASE NO.16404
EXHIBIT NO.27

Government of the District of Columbia
Board of Zoning Adjustment

Appeal No. 16404 of The Capitol Hill Restoration Society, pursuant to 11 D.C.M.R. §§ 3105 and 3106, from the administrative determination of Gladys Hicks, Acting Zoning Administrator, Zoning Division, Building and Land Regulation Administration, Department of Consumer & Regulatory Affairs, made on February 5, 1998, approving the issuance of Home Occupation Permit No. 98-0271 to Jack Milton Fields, the contract purchaser of the property located in a CAP/R-4 district at premises 434 New Jersey Avenue, SE (Square 694, Lot 811).

HEARING DATES: December 16, 1998; February 17, 1999; April 21, 1999
DECISION DATE: June 2, 1999

OPPOSITION TO MOTION FOR RECONSIDERATION FILED BY THE CAPITOL HILL RESTORATION SOCIETY

For the reasons stated below, intervenor, Jack Milton Fields, opposes the motion for reconsideration filed by the Capitol Hill Restoration Society ("CHRS") on the grounds that it fails to raise an issue or fact that was not considered by the Board of Zoning Adjustment at the hearing on this appeal and is, otherwise, without merit.

Under 11 D.C.M.R. §§ 3102.1 and 3332.6, "[n]o request for rehearing shall be considered by the Board unless new evidence is submitted which could not reasonably have been presented at the original hearing." CHRS does not claim that the Board should reconsider this appeal because it has new evidence. Rather, CHRS argues that the Board should reconsider the matter because (1) the Board has not properly characterized the issue on appeal; (2) the Board's action effects an amendment to 11 DCMR § 203; and (3) the permit issued to Mr. Fields was contrary to the practice of the Office of the Zoning Administrator. Neither claims warrants reconsideration and each claim reflects a continued misunderstanding of both the zoning regulations and the proceedings before the Board.

CHRS appealed the issuance of a home occupation permit claiming that Mr. Fields was not qualified to obtain a home occupation permit because the office use proposed is not secondary to his

residential use of the premises, as the premises are not the "principal residence" of Mr. Fields. As this Board ultimately determined, in support of this appeal CHRS relied on its interpretation of testimony in another hearing that was not properly before the Board and was not before the Zoning Administrator. In essence, CHRS sought to challenge the decision of the Zoning Administrator on the basis of non-record material. This was inappropriate. Accordingly, faced with the fact that, at the hearing, CHRS had no evidence to present to support its appeal, the Board inquired further to determine whether the Zoning Administrator's decision was otherwise erroneous since a permit was issued to Mr. Fields at a time when he was the contract purchaser for his residence.

In light of the foregoing, it is not surprising that CHRS now seeks to re-cast its appeal and now argues that the Zoning Administrator had no authority to provide the relief sought by Mr. Fields since he did not reside in the premises at the time he sought the permit. Aside from the fact that this issue has been rejected by the Board, and thus is not proper for reconsideration, it flies in the face of the fact that the issuance of such a permit, or other zoning relief by this Board or the Zoning Commission, to contract purchasers is fairly routine. Since the permits cannot be used until an individual occupies the premises, the position advocated by CHRS would severely undermine the ability of individual property owners to sell or lease property to purchasers or tenants who desire to ensure for themselves that they will obtain or receive the permits necessary for occupying structures or constructing new buildings. Thus, the Board's interpretation of the regulations and the validity of the actions of the Zoning Administrator is entirely reasonable.

For the same reasons as those stated above, including the fact that the issue is not proper for a reconsideration motion, the claim by CHRS that the Board amended §203 is without substance. The Board is responsible for interpreting the zoning regulations and applying them to particular

circumstances. The Board did not hold that persons who do not reside at a particular premises are entitled to a home occupation permit, as CHRS suggests. The Board simply held that a contract purchaser is entitled to use a home occupation permit upon becoming a resident of the structure being purchased. CHRS's attempt to read something broader into this holding is frivolous.

Lastly, CHRS's rehash of the evidence regarding the practices of the Office of the Zoning Administrator is not properly a subject of this motion and is not accurate. In the first place, CHRS never presented any evidence that Mr. Fields did not occupy 434 New Jersey Avenue at the time he was issued the home occupation permit. The only evidence in the record is that he was a contract purchaser at the time he applied. And, as for the practices of the Zoning Administrator, Mr. Nunley testified explicitly that "he saw nothing inappropriate in the issuance of the home occupation permit" to Mr. Fields.

It is apparent that the pursuant of this appeal in this form is simply another attempt to get around appropriate enforcement mechanisms. Mr. Fields has resided at the subject premises for two years. There has been no finding of any violation of the zoning regulations by any authority and this attempt to re-argue positions already rejected by the Board should not be countenanced. Accordingly, the motion by CHRS should be denied.

CONCLUSION

For the reasons stated above the request for reconsideration by CHRS should be denied.

Respectfully submitted,

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

Dated: March 22, 2000

Richard B. Nettler #929471

1801 K Street, N.W.
Suite 1200
Washington, D.C. 20006
(202) 775-0725

Counsel for Intervenor

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition was on this 22nd day of March, 20000 served upon the following by first class mail, postage prepaid:

Lyle R. Schauer, Zoning Chair
Capitol Hill Restoration Society
420 Tenth Street, S.E.
Washington, D.C. 20003

and

Advisory Neighborhood Commission 6B
921 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Richard B. Nettler