GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

June 28, 2000

DISTRICT OF COLUMBIA
OFFICE OF ZONING
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MEMORANDUM

TO : Sheila Cross Reid
Board of Zoning Adjustment

FROM : Michael D. Johnson
Zoning Administrator

Re : BZA Application No. 16586 (Alban Towers)

In order for the applicant, in BZA Application No. 16586, to be able to use an underground garage constructed in the R-2 district for non-required accessory parking for the tenants of the Alban Towers Apartment Building, the applicant need only obtain a special exception under the Zoning Regulations, 11 DCMR, Section 214, 2000.4 or 2116.

A portion of the site, which is zoned R-2 will be used principally for semi-detached houses. The property owner may construct an underground garage beneath the semi-detached houses. The site has historically been used for above ground parking for tenants of the Alban Towers Apartment Building, located on an adjacent lot in an R-5-D district.

The use of the rear site may have predated the adoption of the present Zoning Regulations. Even if the use did not predate the Regulations, since the proposed use is for non-required underground accessory parking, the garage could be built to serve the semi-detached houses. Use of the garage is limited to residential occupants of the square and the principle use of the site is for semi-detached houses.

cc: Armando Lourence, Administrator
Denzil Noble, Assistant Administrator
Richard Nettler, Esq.

MDJ/AL/er

BZA
Case No. 16586
Exhibit No. 40

Board of Zoning Adjustment
District of Columbia
CASE NO.16586
EXHIBIT NO.40

RICHARD B. NETTLER
(202) 775-0725

June 23, 2000

VIA FACSIMILE & E-MAIL

Mr. Armando Lourenco, Administrator
Building & Land Regulation Administration
Department of Consumer & Regulatory Affairs
941 North Capitol Street, N.W.
Room 2500
Washington, D.C. 20002

Re: Alban Towers Site
Our File No.: 091795.0004

Dear Mr. Lourenco:

Thank you for meeting with us this morning. As I explained at the meeting, Sherrie Pruitt and I decided to advertise the Board of Zoning Adjustment hearing the parking garage for the Alban Towers in the alternative. Although we believe that a special exception is required, as discussed below, because the matter is a self-certification case and we and the community want to make sure that the garage is completed in time for the opening of the apartment building, we thought it advisable to advertise in the alternative and then obtain a memorandum from you to the Board indicating that the relief needed is for a special exception.

The special exception would allow the applicant to sell the aboveground matter-of-right semi-detached houses by fee simple, instead of through a condominium regime, and provide non-required accessory parking for the tenants of the adjacent apartment building.

The Alban Towers Apartment Building is located at 3700 Massachusetts Avenue, N.W. (Square 1929, Lots 13). The remaining portion of the site is zoned R-2. The R-5-D site is 68,754 square feet and the apartment building has an overall gross floor area of 326,961 square feet. The exterior, and portions of the interior, of the building were designated a historic landmark in 1991. As you know, § 2100.5 of the zoning regulations provides that a building certified as a historic

landmark need not provide any additional parking.

The proposed garage will be constructed on the 38th Street side of the Square. This rear portion of the square has historically been associated with the Alban Towers Apartment Building. The site contained two open parking lots utilized by the residents and workers at the Alban Towers Apartment Building prior to the adoption of the 1958 zoning regulations. The present owner is rehabilitating the Alban Towers Apartment Building for 229 apartment units and developing the rear site with matter-of-right semi-detached houses. Also being constructed is an underground garage for use by the owners of the houses and the apartment building. Because the two sites have always been under one ownership but are on separate adjacent lots and split-zoned, we filed an application with the Board so that the semi-detached houses could be sold on a fee simple basis and we could provide parking for the tenants of the apartment building.

The principal use of the rear lot will be for fifteen semi-detached houses. As a matter-of-right, we may build an underground garage for those houses. However, in order the sell the houses, fee simple, and to use the underground garage for the tenants of the adjacent Alban Towers Apartment Building, as non-required accessory parking, we are seeking a special exception, under §§ 214, 2116.5 of the zoning regulations.[1]

As already noted, the rear site is zoned R-2, which is a low-density residential zone district. Section 214 of the zoning regulations provides that accessory "passenger automobile parking spaces elsewhere than on the same lot or part of a lot on which the main use is permitted * * * shall be permitted in an R-1 district [and other districts] if approved by the Board of Zoning Adjustment, in accordance with the conditions specified in §3108 of chapter 31 of" the zoning regulations. In seeking such a special exception, the we must demonstrate, under §§ 214.1-214.7, that (1) the accessory parking spaces are in an underground garage no portion of which, except for access, shall extend above the level of the adjacent finished grade; (2) the parking spaces are located in their entirety within two hundred feet (200 ft.) of the area to which they are accessory; (3) the parking spaces are contiguous to the use to which they are accessory; (4) the parking spaces comply with all provisions of chapter 23 regulating parking lots, except as modified by the Board; (5) it shall be economically impracticable to locate accessory parking spaces within the principal building or on the same lot on which the building or use is permitted because of the unusual conditions affecting the adjacent lot; and (6) the spaces are so located and so designed, that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions.

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[1] Arguably, the Charles E. Smith Companies may only need a special exception under § 2000.4, since they are continuing a pre-existing parking use, albeit at a greater intensity.

In addition, section 2116 of the zoning regulations provides that the Board may authorize the location of accessory parking spaces elsewhere than on the lot where the building is located, to which the parking is accessory, if the Board determines that it is not practical to locate the spaces in accordance with §2116.2 because the location of required parking spaces on another lot would result in more efficient use of land, better design or landscaping, safer ingress or egress, and less adverse impact on neighboring properties. Under §§ 2116.7 and 2116.8, when the accessory parking spaces are to be located elsewhere than on the lot upon which the building or structure they are intended to serve is located, the parking on adjacent lots shall be preferred and the parking spaces shall be located so as to furnish reasonable and convenient parking facilities for the occupants or guests of the building which they are designed to serve. The Board may impose conditions on any accessory or non-accessory parking spaces as to screening, coping, setbacks, fences, the location of entrances and exits, or any other requirement it shall deem necessary to protect adjacent or nearby property. The Board may also impose the other conditions as it shall deem necessary to assure the continued provision and maintenance of the spaces.

With regard to the specific requirements of sections 214 and 2116, we intend to show that we meet all of the conditions predicate to granting a special exception. The R-2 lot is adjacent to the apartment building on the R-5-D portion of the Square; the accessory spaces are located in an underground garage; only access portions of the garage extend above the finished grade; the parking spaces are within 200 feet of the apartment building and comply with all provisions of Chapter 23 of the zoning regulations; and it is infeasible to locate the parking within the apartment building. In addition, because of the their location, the parking use will alleviate, rather than aggravate, noise, traffic, parking and other conditions that would otherwise result if the tenants of the apartment building had to use the neighborhood streets for their parking. Furthermore, by placing the parking underground in the manner designed, the security for the tenants and the residents of the semi-detached houses will be maximized and the community is afforded the opportunity to have a landscape amenity developed above the garage.

Clearly, the provision of underground parking, adjacent to the Alban Towers Apartment Building, is in keeping with the intent and purpose of the zoning regulations and the specific provisions authorizing accessory parking on adjacent lots. Furthermore, since the portion of the lot above ground is being developed with matter-of-right semi-detached houses, the principal use of the lot is not being altered nor is their any impact on the zone plan for this site nor the use of neighboring properties.

I have drafted a memorandum for your use in sending to the Board of Zoning Adjustment. Since the hearing is scheduled for July 5, 2000, I would appreciate your having the memo delivered to the Board in time for the hearing and having a copy sent to me at that time.

If you have any questions about the foregoing, please give me a call.

Sincerely,

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

Richard B. Nettler

cc: Mr. James Kane
attachment