LAW OFFICES

GREENSTEIN DELORME & LUCHS, P.C.

WILLIAM H. HARRIS, JR.
RICHARD G. WISE
ABRAHAM J. GREENSTEIN
GILBERT E. DELORME
VINCENT MARK J. POLICY
RICHARD W. LUCHS
JUDITH R. GOLDMAN
JACQUES B. DEPUY
JEFFREY H. GELMAN
ALAN S. WEITZ
WILLIAM C. CASANO
STEPHEN H. ABRAHAM
LEWIS F. MORSE
JOHN PATRICK BROWN, JR.
ALFRED M. GOLDBERG
DONALD F. HOLMES, JR.
MIRIAM HELLEN JONES
SARAE T. LEUCKEL
ISABEL P. RUIZ DE GAMBOA*
JEANNINE RUSTAD
JAMES D. SADOWSKI

*ADMITTED IN VA ONLY

1620 L STREET, N.W., SUITE 900

WASHINGTON, D.C. 20036-5605

TELEPHONE (202) 452-1400
FACSIMILE (202) 452-1410

OF COUNSEL
MARK J. ZWEIFLER
61 WEST 62ND STREET
7TH FLOOR - SUITE E
NEW YORK, NEW YORK 10023
(212) 664-1099
FACSIMILE (212) 586-1535

August 22, 2000

'00 AUG 22 P1:50

OFFICE OF ZONING
DISTRICT OF COLUMBIA

BY MESSENGER

Ms. Sheila Cross-Reid
Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W., Suite 210
Washington, D.C. 20001

Re: BZA Application Number 16592; The Car Barn; 3600 M Street, N.W.

Dear Madame Chairperson:

Enclosed is the original and eight (8) copies of the Applicant's Pre-Hearing Statement ("Statement") in conjunction with the referenced Application. Please note that the Statement includes *inter alia* (i) a Voluntary Agreement with several community representatives; and (ii) proposed conditions to the BZA order.

The proposed conditions to the BZA order are the product of numerous meetings with community representatives and are intended to anticipate, avoid and/or resolve any potential adverse effects of the Applicant's continued use of the subject property. Please note that the proposed conditions are subject to further review by community representatives, including ANC 2-E, and may therefore be revised prior to the public hearing.

Thank you for your consideration of these matters.

Sincerely,

Jacques B. DePuy

Enclosures
cc: Advisory Neighborhood Commission 2-E (w/encls.)
Office of Planning (Attn: Ms. Jennifer Steingasser) (w/encls.)

BZA Case No. 16592 Exhibit No. 26

Board of Zoning Adjustment
District of Columbia
CASE NO.16592
EXHIBIT NO.26

PRE-HEARING STATEMENT OF THE APPLICANT IN SUPPORT OF BOARD OF ZONING ADJUSTMENT APPLICATION NUMBER 16592 PERTAINING TO THE HISTORIC CAR BARN AT 3600 M STREET, N.W.

This Pre-Hearing Statement is submitted by the Applicant, Jemals/Cary Carbarn LLC, by its attorneys, Greenstein DeLorme & Luchs, P.C., by Jacques B. DePuy, Esquire, in support of Application Number 16592.

PROPOSED USE. By Application No. 16592, the Applicant seeks permission to continue the use of the outdoor terraces and a pavilion that are located on the roof of the building at 3600 M Street, N.W. Such use of the terraces and pavilion is, and would continue to be, in conjunction with and ancillary to the established use of the 4th floor of the building as a conference center for receptions and other special events and restaurant.

As discussed below, all of the 4th floor of the building and certain portions of the terraces are located within the C-2-A zone district. The remainder of the terraces and the pavilion are located within the R-3 zone district.

The conference center/restaurant facility is used for meetings, conferences, awards dinners, receptions, luncheons, weddings and other special events. These events are held indoors within the 4th floor of the building and, in certain instances, are held both indoors and outdoors. The events and functions that take place outdoors are all integrally related to, are a part of, and are ancillary and accessory

to, the functions and events that occur indoors within the 4th floor of the building. No events take place solely on the terraces or within the pavilion (i.e., without the primary and underlying use of the 4th floor of the building).

ZONING RELIEF REQUESTED. Application No. 16592 seeks: (i) a special exception to extend a use across a boundary line crossing a lot into that portion of the lot located in the more restrictive zone district; and (ii) a variance to extend a use from the lesser restricted portion of the lot into the more restrictive zone district a distance greater than thirty-five (35) feet.

PRIOR USE OF TERRACES AND CONSTRUCTION OF PAVILION. The rooftop terraces were constructed in 1986 when the 4th floor was added to the building. The Building Permit, No. B317980 issued on October 28, 1986, specifically authorized the construction of "ROOFTOP... LANDSCAPING" and a "1 STORY EXTERIOR COURT, AS PER PLAN & PLAT." [See Exhibit "A" to the Statement of Reasons Submitted with Application No. 16592.] Construction of the 4th floor and the rooftop terraces was approved in 1986 by the Old Georgetown Board of the Commission of Fine Arts. The terraces have been used since 1986 continuously for business and commercial uses in conjunction with, and ancillary to, the use of the 4th floor of the building.

The rooftop pavilion was constructed in 1999 pursuant to Building Permit No. B421837 which was issued on February 9, 1999. This building permit authorized the construction of a "ROOFTOP PAVILION (sic) AS PER PLANS". [See Exhibit "C" to the Statement of Reasons.] The use authorized by this building permit was for "BUSINESS" occupancy. In addition, the site of the new construction was acknowledged on the building permit to be split-zoned between R-3 and C-2-A. The design of, and the materials used in, the rooftop pavilion were approved by the Old Georgetown Board of the Commission of Fine Arts. Since its approved construction in 1999, the pavilion has been used for business/commercial uses in conjunction with, and ancillary to, the use of the 4th floor of the building as a conference center/restaurant facility.

IMPACTS OF CONSTRUCTION AND INITIAL USE OF PAVILION ON SURROUNDING NEIGHBORHOOD. When the pavilion was constructed in 1999, there was a certain amount of construction noise which became of concern to several nearby neighbors and which led to complaints to the Applicant and to public officials. In addition, the use by construction vehicles of Prospect Street, N.W. [which is the only street with access to the rooftop terraces] was perceived by several neighbors as causing traffic and parking problems.

When the construction was completed and the use of the pavilion for special events commenced, additional difficulties with certain

neighbors developed. For example, notwithstanding that the pavilion was constructed as and is an accessory structure which does not require a separate certificate of occupancy, the use of the pavilion for special events and functions, as well as noise and loading/unloading impacts perceived by certain nearby neighbors to occur, led to concerns as to whether or not the pavilion was properly zoned for the use being made of it by the Applicant. In addition, complaints were filed with the Alcohol Beverage Control Board (the "ABC Board") and the Zoning Administrator regarding liquor license, use, loading, traffic and parking issues.

As a result of the foregoing, and pursuant to mediation efforts organized by the ABC Board, the Applicant and community representatives (including a member of ANC 2-E and a representative of the Citizens Association of Georgetown) negotiated an agreement to mitigate the adverse impacts resulting from the use of the pavilion and the terraces. [See Voluntary Agreement for the Car Barn dated June 12, 2000 ("Voluntary Agreement") attached hereto as Exhibit "A".] Moreover, the Applicant took a number of significant actions to reduce or eliminate the impacts that were of concern to the community prior to, and in conjunction with, the negotiation, execution and implementation of the Voluntary Agreement. Included in these actions were the following:

1. Elimination of loading and unloading activities on Prospect Street.

2. Reduction in the hours of operation of all events held outdoors.

3. Limitation on the events held in the pavilion to those events previously scheduled.

4. Prohibition on use of Prospect Street for bus or other motor vehicle access to property.

5. Prohibition of amplified music outdoors.

6. Requirement that all guests to Historic Car Barn functions arrive and depart via the M Street entrance.

7. Designation of a specific representative of the Applicant as the 24-hour a day, 7-day a week contact person for any on-going neighborhood concerns and the agreement of the Applicant to contact on-site employees to remedy problems immediately.

8. Agreement by the Applicant that a violation of any of the terms of the Voluntary Agreement shall constitute due cause for the issuance by the Zoning Administrator of a notice of civil infraction and for the ABC Board to deny further one-day liquor licenses.

Subsequent to the June 13, 2000 execution of the Voluntary Agreement, the Applicant has complied in all respects with the terms of the Voluntary Agreement. As a result, subsequent to such Agreement, there have been no complaints or problems from community representatives about any of the events and functions of The Historic Car Barn held on the terraces and pavilion. Furthermore, there have been no civil infractions issued subsequent to the execution of the

Voluntary Agreement [several such infractions were issued prior to the Voluntary Agreement] and no one-day liquor licenses have been denied by (and no denial has been requested from) the ABC Board subsequent thereto.

ON-GOING NEGOTIATIONS BETWEEN THE APPLICANT AND COMMUNITY REPRESENTATIVES TO PREVENT FUTURE PROBLEMS AND MITIGATE POTENTIAL FUTURE IMPACTS. Subsequent to execution of the Voluntary Agreement, the Applicant has met with representatives of community organizations and neighbors to anticipate, avoid and/or resolve future problems which might occur and to mitigate potential future impacts of the activities by the Applicant on the terraces and in the pavilion. Furthermore, the Applicant and such representatives are, as of the date of the submission of this Pre-Hearing Statement, negotiating a comprehensive list of proposed conditions to be included in the Board's order approving the subject Application. [A draft of such proposed conditions, which is subject to further negotiation and agreement by the parties, is attached hereto as Exhibit "B".]

LEGAL STANDARD FOR GRANTING REQUESTED SPECIAL EXCEPTION AND VARIANCE. As the Board is aware, a special exception is a use that is deemed by the Zoning Regulations to be compatible with other uses permitted in the same zoning district. Furthermore, the Board's discretion in reviewing an application for a special exception is

limited to a determination as to whether the Applicant has complied with the enumerated requirements under the applicable section of the Zoning Regulations. With respect to the subject Application, such requirements for special exception relief are set forth in 11 DCMR 2514.2(a-d). If the Applicant meets its burden, the Board ordinarily must grant the Application. Washington Ethical Society v. D.C. Board of Zoning Adjustment, 421 A.2d 14 (D.C. 1980); Stewart v. D.C. Board of Zoning Adjustment, 305 A.2d 516, 518 (D.C. 1973). As required by Section 2514.2 (and as discussed in greater detail below), the Applicant has satisfied each of the enumerated items, including the following:

(a) The 35-foot limit is inapplicable due to the request by the Applicant for a variance from such limit;

(b) The floor area ratio of the improvements located in the R-3 zone is less than six-tenths (0.6);

(c) The extension of the existing C-2-A use into the R-3 zone will have no adverse effect upon the present character and future development of the neighborhood; and

(d) The Applicant, in consultation with neighbors and community groups, including the affected Advisory Neighborhood Commission, has developed and submitted a proposed list of conditions to the Board's order in order to protect adjacent and nearby property.

The burden of proof for an area variance is well established. The Applicant must demonstrate that the subject property is affected

by extraordinary or exceptional conditions, that the strict application of the Zoning Regulations will result in practical difficulties to the Applicant and that granting the variance will not cause substantial detriment to the public good nor impair the intent, purpose or integrity of the zone plan. Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 541 (D.C. 1972).

EXTRAORDINARY AND EXCEPTIONAL CONDITIONS OF PROPERTY AND RESULTING PRACTICAL DIFFICULTIES. There are several extraordinary and exceptional conditions that affect the subject property and which cause practical difficulties to the owner.

First, the property is "split-zoned." Specifically, the portion of the property facing M Street, N.W., which includes the entirety of the 4th floor and a portion of the terraces, is zoned C-2-A. However, the balance of the site, to a depth of 124 feet measured from Prospect Street, N.W. towards M Street, N.W., is zoned R-3. [See attached site plan, Exhibit "C".]

Second, the pavilion is an accessory structure for which a building permit for "BUSINESS" use was duly issued on February 9, 1999. As a result, the Applicant relied on the issuance of a building permit by the Government of the District of Columbia and incurred considerable expense in the construction of the pavilion and the reconstruction of the terraces. Notwithstanding such governmental approval by the District of Columbia Government, the Zoning

Administrator has determined that a special exception is required to extend the use permitted in the C-2-A portion of the site to the R-3 portion. Thus, because of the split-zoning of the property and the determination by the Zoning Administrator, it is not possible to use a portion of the terraces or the pavilion without zoning relief. Furthermore, it is not possible to use all of the rooftop terraces and the pavilion without a variance because an extension of the C-2-A zone line only thirty-five (35) feet into the R-3 line cuts the terraces roughly in half and renders the pavilion unusable. It is not possible, from a physical or operational standpoint, to operate or use only one-half of the terraces and it is impractical and burdensome not to use the pavilion at all.

Third, the Car Barn Building is an historic property which contributes to the significance of the Georgetown Historic District. Furthermore, it is a property that occupies one hundred percent (100%) of its lot. As a result of its historic status and its lot coverage, it is not possible to create any open space, such as is normally located in courts or yards, except on the roof of the building. The roof, because it is affected by the split-zoning of the property, cannot effectively be used for such purposes without the grant of the special exception and variance.

JUSTIFICATION FOR THE RELIEF SOUGHT: The zoning relief sought by the Applicant can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan for the following reasons:

1. As set forth in detail above, the Applicant has addressed and resolved the noise, traffic, parking and other impacts on Prospect Street and other nearby properties of the events held on the terraces and in the pavilion.

2. The inclusion by the Board of Zoning Adjustment of conditions to a grant of the Application, in form substantially similar to the conditions attached hereto as Exhibit "B", will assure the Board and the community that adverse impacts do not occur in the future and that there will be no substantial detriment to the public good in the future.

3. The extension of the conference/restaurant facility from the C-2-A zone district to the R-3 district is compatible with surrounding uses. See Area Plan and Site Photographs, attached as Exhibits "D" and "E".

4. There is adequate parking and loading in the building for the events and functions held on the rooftop terraces and in the pavilion. In addition, access to such parking and loading is provided from a commercial street (M Street, N.W.).

5. The extension of the principal use across a zone boundary line will not adversely effect traffic because all traffic to and from the property uses, and will continue to use, M Street, N.W. (not Prospect Street, N.W.). The requested special exception and variance will not increase the number of guests able to attend events at the existing facility or the traffic created by such guests.

FOR THE FOREGOING REASONS, and on the basis of the evidence submitted with the Application and herewith and to be submitted at the public hearing, it is respectfully submitted that Application Number 16592 satisfies the requirements applicable to the requested relief and that it should therefore be granted.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

By: Jacques B. DePuy

Jacques B. DePuy

142111