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October 8, 2001

BY FACSIMILE -- (202)452-1410

John Patrick Brown, Jr., Esq.
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, DC 20036

Re: BZA Application No. 16740;
2989 Arizona Avenue, N.W.
Our File No. 092056.0001

Dear Pat:

In light of the baseless allegations in your letter dated October 5, 2001, this letter shall serve to clear the record and to correct the position of Chain Bridge Road/University Terrace Preservation Committee and the Palisades Citizens Association with regard to negotiation efforts.

First, as outlined below, your statement that the community is "unwilling to move forward in good faith negotiations until they have documented the trees that were removed" misrepresents the community's position regarding the starting point for any meaningful negotiations and takes the community's efforts in documenting the damage caused by the applicant to the property out of context. It is only because the applicant has continually misstated the severity of his actions that the community has been forced to attempt to document the true extent of the damage to the property. As I stated after the ANC meeting, it was not our client who illegally removed the trees. It is disingenuous for the applicant to claim that he does not know the exact number of trees removed. Surely, if he communicated with his contractor, he

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could come closer to an accurate count. Regardless, simply counting the number of stumps remaining at the property, when many stumps have been removed from the site, is a blatant attempt of deception. An attempt which both our clients and ANC 3D have seen through.

With regard to both past and any future negotiations, as we have made clear from the beginning, our clients have asked for plans which are consistent with the Overlay. As a reminder, a special exception under the Overly is subject to the requirement, *inter alia*, that:

> Tree removal, grading, and topographical change ***shall be limited*** to the maximum extent consistent with construction of a building permitted by the standards of this chapter.

11 D.C.M.R. § 1569.1(a)(emphasis added).

Thus, in order to facilitate meaningful negotiations, the applicant must take into account the true extent of his damage. Only upon reviewing the property in its natural state, prior to the clear-cutting, can a determination be made as to whether proposed plans minimize the damage to the property. Obviously, such a review mandates an accurate (or, at the very least, a realistic) count of the number and caliper of trees removed. It is the community's position that, to date, none of the plans produced by the applicant take into consideration either the Overlay provisions or the natural state of the property.

Contrary to your statement that "what's done is done" and that the parties need to move forward, as to do otherwise is to "cry over spilt milk", compliance with the Overlay necessitates that the starting point for moving forward is the property in its prior, natural state. For any meaningful negotiations to occur, the applicant must produce a proposal which is consistent with the Overlay. Although you claim not to know what this means, the Overlay provisions are quite clear. To be certain, the fact that the applicant's plans are inconsistent with the overly has been recognized by everybody except the applicant. *See* ANC 3D resolution and Office of Planning Report. These statements made on behalf of the applicant serve only to further evince the applicant's callous disregard for the Overlay.

Despite the applicant's continued failure to produce plans which could serve as the basis for meaningful negotiations, our clients have expressed an interest in working with the applicant towards a resolution of this mater. In fact, they have expressed such an interest since the issuance of the stop-work order in December 2000. Rather than attempt to work with the community towards a mutually acceptable resolution of this matter, after five (5) months of no contact, the applicant filed an application for a special exception based upon his original plans, which plans show absolutely no concern for the subject Overlay. Again, the instant BZA application was filed with no prior notice to the community.

As you are well aware, upon learning of the BZA application filed by the applicant, in early June, members of the community represented by our firm immediately attempted to schedule a meeting with the applicant. The applicant was provided with very specific concerns about the proposed development of the site but, to date, those concerns have gone unaddressed.

Specifically, our clients have repeatedly asked to see plans which take into consideration what could have been built on the site had the applicant not violated the Overlay provisions and which are consistent with the Overlay provisions. Criteria which have been provided to the applicant on numerous occasions include that any proposal must:

1. Fully reflect the limitations inherent in the site prior to the illegal clear-cutting;

2. Accommodate those pre-existing limitations in the design and siting of the principal structure and in the extent and placement of impervious surfaces;

3. Include a comprehensive landscape plan that fully reflects the number of legally and illegally removed trees; provides for replacement specimen trees of indigenous species; enhances topography of the site, and is contextually harmonious with surrounding landscape and properties; and

4. In all other respects achieves the purposes of the Chain Bridge Road/University Terrace Tree and Slope Protection Overlay.

Despite the applicant's failure to provide an appropriate proposal, the community has attempted to negotiate in good faith with the applicant. However, the applicant's continued delay in producing *any* revised plans has stalled such efforts. For example, the applicant did not come up with any revised plans until August 27, 2001, and these plans fell far short of the community's recommendations for a starting point in negotiations. Still, the community agreed and did meet with the applicant. Additionally, revised plans which were attached to the applicant's prehearing statement were not made available to the community upon their completion. Rather, the community obtained a copy from the Office of Planning (unfortunately, they did not learn of the revised plans until mid-afternoon on September 25, 2001). Thus, by withholding the plans, the applicant denied the community any meaningful time to review the plans prior to the ANC meeting.

Finally, since his purchase of the property, the applicant has acted in bad-faith. Had the applicant truly been concerned about compliance with the Overlay, upon discovery of his "mistake", effort would have been made to secure the site so as to prevent further erosion. His lack of concern is further demonstrated by the fact that no effort has been made to perform an environmental survey of the site and the nine month delay in making the minimal effort of hiring an arborist.

Once again, you are reminded that if the applicant wants meaningful negotiations, he must come up with a design and reforestation plan which adheres to the specific guidelines provided by the community on numerous occasions. Until such plans are provided, it is the applicant who is preventing any meaningful negotiations. As you are aware, it is the applicant's burden to design a proposal which is consistent with the Zoning Regulations. It is not the community's responsibility to design a structure and reforestation plan, which, given the applicant's failure to adhere to the Overlay, would be required for any meaningful negotiations at this point.

In closing, I suggest that the applicant's time would be better spent in producing plans consistent with the Overlay rather than casting aspersions on the community in attempt to put himself in a better light.

Sincerely,

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

Jeannine Rustad Zigner

cc: Ms. Judith Lanius (by facsimile)
Ms. Eleanor Roberts Lewis, Esq., Chair, ANC 3D (by facsimile)
Ms. Sherri M. Pruitt, Board of Zoning Adjustment (by hand)
Ms. Maxine Brown-Roberts, Office of Planning (by facsimile)
Richard B. Nettler, Esquire