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BZA

August 1, 2002

BY HAND
Mr. Geoffrey Griffis
Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Room 210
Washington, DC 20001

BZA
Case No. 16907
Exhibit No. 30

Re: BZA Application No. 16907 of US Property Development Corporation
Our File No. 092000.0008

Dear Mr. Griffis and members of the Board:

This letter shall respond to the Office of Planning Supplement Report dated July 29, 2002, regarding the request of US Property Development Corporation ("US Property") for flexibility in the amount of space to be provided on the ground level of the subject property for arts, service and retail uses specified in sections 1907 and 1908 of the Zoning Regulations (11 DCMR). Specifically, US Property seeks the flexibility to reduce this area from the forty-seven point seven percent (47.7%), as set forth in the application, to forty percent (40%). In the alternative US Property requests flexibility to reduce this space to the forty-four percent (44%) previously supported by the Office of Planning.[1] Such flexibility is in harmony with the general purpose and intent of the zone plan and maps and will not harm the surrounding neighborhood.

The request for flexibility comes as a result of discussions with retail leasing consultants for the subject property. Leasing consultants have indicated that, because of the extreme narrowness of the subject property and resulting limited street frontage along Fourteenth Street, along with the extreme depth of the property, it may not be possible to find either a retail or arts related user for the entire space to be located at 1526 14th Street, N.W.

As requested by the Board, US Property met with the Office of Planning to discuss this request for an increased special exception from the requirements of section 1902 of the Zoning Regulations. At the meeting, the Office of Planning suggested that it would support the request,

[1] The fact that the Office of Planning based this support on its own calculations, rather than the applicant's representations, such error does not diminish the fact that the Office of Planning supported a reduction to forty-four percent (44%).

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so long as any space not used by arts, service or retail tenants be used as (1) additional residential recreation space or (2) non-retail uses permitted under the Arts Overlay. However, the first option would not only result in the loss of crucial space and return to US Property, as testified at the hearing, indoor residential recreation space is not desirable to condominium unit owners. The second option does not offer the increased flexibility sought by US Property, as it merely allows uses already permitted as a matter of right in the Arts Overlay.

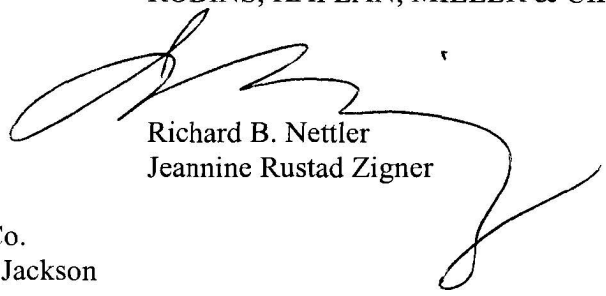
Because of the significant alterations to the design proposals US Property has had to make, it has lost at least three (3) prime residential units. Despite this loss, US Property has been able to design a project that will significantly contribute to the purposes of the Comprehensive Plan and Zoning Regulations while remaining economically viable. However, because of the constraints and loss of space, it is crucial that US Property be able to maximize the marketability of the available space.[2]

In short, the Office of Planning response to the request for the flexibility to use the space for alternative uses for the space in question would result in underutilized space in the project and, most likely, the need for US Property to return to the Board to renew its request for a further reduction. In contrast, allowing flexibility to reduce this space to forty percent meets the requirements set forth in section 1906 of the Zoning Regulations. *See* Prehearing Statement at page 23. The support set forth in the Prehearing statement applies equally to a reduction to either forty or forty-four percent (40 or 44%), as it does to a reduction to forty-seven percent (47%). Finally, because US Property must maximize its return on the available space in the project, US Property will make every effort to maximize the retail or arts related uses on the ground level.

In conclusion, US Property respectfully requests the flexibility to reduce the ground floor space dedicated to arts, service or retail to forty percent (40%) in the event it is unable to lease such space for these purposes. In the alternative, US Property requests flexibility to reduce this space to the forty-four percent (44%) previously approved by the Office of Planning.

Sincerely,

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



Richard B. Nettler
Jeannine Rustad Zigner

cc: Metropolis Development Co.
Office of Planning, Arthur Jackson
ANC 2F

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[2] The additional flexibility sought by US Property of forty percent (40%) is a mere 800 square feet of space in comparison to the forty-four percent (44%) previously supported by the Office of Planning. Although small, it is critical to the ability of US Property to market the residential units and obtain a return on the non-residential space.