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February 21, 2003

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D.C. OFFICE OF ZONING
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VIA HAND DELIVERY

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: BZA Appeal No. 16934
922 Constitution Avenue, N.E.

Dear Members of the Board:

We understand from the Office of Zoning that the Board of Zoning Adjustment (the "Board" or "BZA") will consider at its March 4, 2003, meeting, the Motion to Dismiss filed on behalf of Christopher's Row, LLC. To assist the Board in its deliberations on this matter, we submit the following supplemental information on behalf of Christopher's Row for the Board's consideration. We also ask that the Board rule on the pending motion to grant intervenor status to Christopher's Row, LLC, at that same meeting.

1. Advisory Neighborhood Commission 6A Was Not Properly Authorized to File the Appeal.

Nothing in the record for BZA Appeal No. 16934 indicates that Advisory Neighborhood Commission ("ANC") 6A voted to oppose and appeal the issuance of Building Permit No. 445856. That permit authorized JFC Builders, LLC, the predecessor in interest to Christopher's Row, LLC, to lay a foundation for a row dwelling at 922 Constitution Avenue, N.E., Washington, D.C. The only reference in the record to ANC action is a letter to the Acting Zoning Administrator – not to the BZA – signed by a Capitol Hill resident, Virginia

BZA
Case No. 16934
Exhibit No. 37

Board of Zoning Adjustment
District of Columbia
CASE NO.16934
EXHIBIT NO.37

Smith. That letter states that ANC 6A voted on July 11, 2002, to appeal the foundation permit for 922 Constitution Avenue, N.E., on the grounds that it is inconsistent with the order in BZA Case No. 16811 (the *Pritchard* case). The Smith Letter, identified as Exhibit 7 in the BZA record, is insufficient evidence of the ANC's intentions. Contrary to the requirements under the ANC law, there is no official letter from the ANC noting a quorum, recording a vote on a particular position, or indicating that the issue was discussed at a properly noticed meeting. *See* D.C. Code § 1-309.10(d)(1) (an ANC shall consider a government action in a meeting open to the public, with notice given and any recommendation of the ANC shall be in writing and articulate the basis for its decision.)

Instead, the only "official" communication from the ANC itself is a letter from the ANC 6A Vice Chair, authorizing another Capitol Hill resident, Virginia Gaddis, to act as his agent to deliver materials on an unspecified appeal to the BZA from July 22 "until we have our issues registered." *See* Exhibit 4 in the BZA record. There is absolutely no reference to the subject of the appeal in the letter or any real limitation on the authority purportedly being conferred on the non-ANC member. Not only does this letter fail to comply with the requirements of the ANC law, it also attempts to delegate blanket authority from the ANC to a non-Commission member when the ANC law does not provide for any such delegation of authority. *See* D.C. Code § 1-309.10 *et seq.*

The failure to comply with the requirements of the ANC law prejudices the rights of the property owner and any other residents of the community who must rely on or are affected by the official action of the ANC. Without following proper procedures, anyone in the community could purport to act on behalf of the ANC. Thus, it is critical that all ANC actions conform with the requirements of the ANC law. Because ANC 6A failed to meet these requirements, neither the ANC nor Virginia Gaddis were properly authorized to file the appeal on behalf of the ANC.

2. Subsequent ANC Action Cannot Cure the Initial Defects of the Appeal.

The ANC action taken in November 2002 did not cure these defects of the appeal. By letter dated November 7, 2002, ANC 6A authorized Virginia Gaddis to represent the ANC before the BZA in Appeal Case No. 16934. *See* Exhibit 25 in the BZA record. In contrast to the Vice Chair's letter, this letter does follow the proper format. It nevertheless fails for two reasons. First, it does not retroactively grant Virginia Gaddis the authority to file the appeal from July 2002. Second, even if it did so, the correction came too late. As set forth in detail in Christopher's Row Motion to Dismiss, appeals must be filed within 60

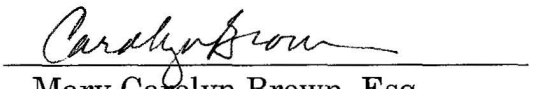
days of a government action. The subsequent ANC action came over 100 days late and thus cannot correct the deficiencies of the initial filing.

Additionally, even if these infirmities did not exist, the ANC appealed the wrong permit. The foundation only permit did not authorize construction of the row dwelling walls that purportedly violate the side yard requirements of section 405.3 of the Zoning Regulations. Because the wrong permit was challenged, the Board lacks subject-matter jurisdiction to hear the case.

These deficiencies in the appeal cannot be waived by the Board. Although the BZA may waive certain procedural requirements of its own regulations under section 3100.5, it does not have the authority to waive the explicit requirements of the ANC law or any other law. Thus, the infirmities of the ANC appeal cannot be cured and the case should be dismissed accordingly.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 

Mary Carolyn Brown, Esq.
Steven E. Sher, Director of
Land Use and Zoning Services

cc: Attached Service List
Christopher's Row, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Supplemental Letter in Support of Intervenor's Motion to Dismiss in BZA Appeal No. 16934 were served by first-class mail, postage prepaid, on the following:

ANC 6A03
Cody Rice
310 9th Street, N.E.
Washington, D.C. 20002

Virginia Gaddis
238 11th Street, N.E.
Washington, D.C. 20002

Robert Kelly, Zoning Administrator
Building and Land Regulation Administration
D.C. Department of Consumer & Regulatory Affairs
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