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GOVERNMENT OF THE DISTRICT OF COLUMBIA
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4 September 2003

Geoffrey Griffis, Chairperson
Board of Zoning Adjustment
Office of Zoning, Suite 210
441 4th Street NW
Washington, DC 20001

RE: BZA Case No. 16938
Most Worshipful Prince Hall Grand Lodge

Dear Chairperson Griffis:

After the conclusion of our regularly monthly meeting in August of 2003, ANC1B received notification from the Office of Zoning that the applicant in this case was allowed to withdraw their application pursuant to subsection 3113.10 of the Zoning Regulations. Mr. Richard S. Nero Jr. has informed us that the Board of Zoning Adjustments will be discussing the permission to withdraw at your regularly scheduled meeting on September 9th, and that any written submissions from ANC1B should be received by September 4th. ANC1B will be holding our regularly scheduled meeting on the evening of September 4th, and we will be addressing the withdrawal at that meeting. These time lines do not allow ANC1B to consider the matter and to submit them in a timely fashion. In this letter we are stating our objections to the withdrawal, and ask that you allow the full membership of ANC1B to either ratify this letter or submit the conclusions of their debate on September 5th.

ANC1B has been an active participant in BZA 16938 since the summer of 2002. We participated in the original BZA application #16901, and accepted the withdrawal and reapplication as BZA 16938. We have attended all scheduled BZA hearings dealing with this case, and continue to follow the disposition of the case. We are appalled by the Office of Zoning's use of subsection 3113.10 to allow the withdrawal of the application in a post-hearing context. ANC1B was prepared to deal with reconsideration, rehearing or appeal of the May 6th decision of the Board, but we were shocked to hear of the post decision withdrawal. We recognize the Office of Zoning's response that this loophole has precedent and that there is not readily available recourse for contesting or appealing the decision to allow the withdrawal. ANC1B relies on agencies and boards of the government to provide stability and to decide issues on their merits. ANC1B considers that the use of 3113.10 to be an erroneous reading of the intentions of the Zoning Regulations, and an emasculation of the powers of the Board of Zoning Adjustment.

Chapter 31 of DCMR 11 details the "Rules of Practice and Procedure" employed by the Board of Zoning Adjustment, and the Sections of Chapter 31 are laid out in an orderly fashion. Section 3113 is entitled "Pre-Hearing Procedures for Applications" and its subsections detail the necessary preparation required for filing an application to be heard by the Board of Zoning Adjustments. Subsection 3113.10 does indeed include the language "The applicant may withdraw an application at any time... Without leave of the Board, a new application shall not be accepted for filing again for at least ninety (90) days after withdrawal of the application". Chapter 31 continues through six subsequent sections to detail the regulations concerned with the hearing process and eventually arrives at section 3124 "Post-Hearing Procedures: General Provisions", and section 3125 "Final Decision and Effective Date of Decisions". No mention of the ability to withdraw is given in either of these sections. Options for applicant's whose application has been denied is then detailed

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Exhibit No. 79

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in section 3126 including reconsid on or rehearing, and in subsection 3126. . . An appellant or applicant whose appeal or application has been denied shall not institute a new appeal or application on the same facts within one year." Allowing an applicant to use the provisions of 3113.10 in the context of post hearing procedures does damage to the intention of the body of language in sections 3124, 3125 and 3126. An applicant who has proceeded through the hearing process to the decision of the Board should be allowed the options offered by the regulations e.g. appeal, rehearing or reconsideration and should be held to the restriction of not reapplying before the lapse of one year. Allowing an applicant to hear the decision of the Board and consequently allowing the applicant to withdraw (and use the less restrictive time restraints of the pre-hearing language) prior to the written decision devalues the Board decision, the governmental cost of the hearing process, and the time and expense of opposing parties.

ANC1B encourages the Board to analyze the use of subsection 3113.10 to allow withdrawal of an application subsequent to the decision of the Board. ANC1B is prepared to address the newly revised application in either 90 or 365 days; however, we adamantly oppose the use of subsection 3113.10 to allow a withdrawal of an application in the context of post-hearing procedures. As stated above we ask your indulgence in allowing the full Commission to review or ratify this letter and to edit or amend as they deem appropriate, and to submit any changes after the September 4th noon deadline.

Sincerely,

Deborah R. Thomas, Chairperson

Philip C. Spalding, Secretary
Box 73710, Washington, DC 20056

CC: Holland and Knight LLP
Councilmember Jim Graham
Ellen McCarthy, Office of Planning
Alan Bergstein, Office of the Corporation Counsel
Jerrily R. Kress, Director, Office of Zoning
Westminster Neighborhood Association
Cardozo Shaw Neighborhood Association
Office of Advisory Neighborhood Commissions
Jim Berry, ANC Assembly