BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

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RE: Application of The Most Worshipful Prince Hall Grand Lodge for Special Exception and Variances to Operate an Accessory Parking Lot Located at 1902 Vermont Avenue, NW, Lot 827, Square 333.

Case. No. 16938

COMMENT/OBJECTION TO WITHDRAWAL OF APPLICATION

Submitted by
Westminster Neighborhood Association

1) The Board of Zoning Adjustment has before it for consideration the Withdrawal of the Amended Application of The Most Worshipful Prince Hall Lodge for a special exception to establish an accessory parking lot and for two variances in the R-4 District at premises 1902 Vermont Avenue, NW (Square 333, Lot 827). This attempted Withdrawal by applicant was addressed to the Board of Zoning Adjustment and was filed August 7, 2003. The director of the Office of Zoning, by letter dated August 11, 2003, responded to applicant by acknowledging receipt of their Withdrawal. The BZA is scheduled to consider the efficacy of this Withdrawal in executive session on September 9. It is requested that the BZA consider these Comments during its consideration of this matter.

Relevant History

2) The BZA held a full and extensive evidentiary public hearing on this application on February 25, March 18, and March 25, 2003. The application was strongly contested by numerous members of the community, including the applicable ANC and the Westminster Neighborhood Association. The record was closed March 25. The parties were given to April 29 to submit Proposed Findings of Fact, Conclusions of Law and Decision. The BZA then met on May 6, 2003, in executive session, and decided to deny the application (by vote of 5,0).

3) The applicant has now attempted to withdraw its application pursuant to 11 DCMR § 3113.10 of the Zoning Regulations. There have been no appellate decisions

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considering whether this regulation permits an applicant to withdraw an application after a full evidentiary hearing, proposed findings have been filed, and the BZA has orally decided to deny the application. WNA argues that the use of §3113.10 to permit withdrawal at this stage of the proceeding constitutes an erroneous application of this zoning regulation as well as an emasculation of the powers of the Board of Zoning Adjustment.

Withdrawal Regulation is not Clear

4) The plain meaning rule applicable to statutory interpretation states that if the meaning of a legislative text is plain, a tribunal may not interpret it; rather, they must simply apply it as written. The tribunal may resort to the rules and techniques of statutory interpretation only if the text is ambiguous. A corollary of this principle is that a statute or regulation will be given its common and ordinary meaning if possible. If it is clear on its face, no further analysis is permitted. Turning then to the regulation at issue, § 3113.10, it must be determined whether this regulation is plain on its face.

5) Subsection 3113.10 for purposes relevant here, contains one full sentence: "The applicant may withdraw an application at any time." At first blush, this regulation appears plain, clear, and all-encompassing. Taking this short, direct sentence at full value, however, means literally that the applicant has the right to withdraw its application "at any time." Giving these words their common and ordinary meaning, this would permit an applicant to withdraw its application after the record has closed or even after a formal decision has been entered. Indeed, taken to its full extent, this regulation permits the applicant to withdraw its application even after the time period for appeal has expired. The problem with this regulation is that it gives no deadline whatsoever as to when it may be exercised, although the drafters certainly did not intend for it to be used in all these absurd circumstances. Finding this ambiguity, then, permits—if not requires—the BZA to

determine whether the right of withdrawal permitted by this regulation terminated prior to its exercise in this proceeding.

Context of Regulation Helps Determine Its Scope

6) Chapter 31 of DCMR, Title 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 a time-sequential fashion. Most importantly, § 3113 is titled "Pre-Hearing Procedures for Applications" and its twenty subsections all relate to the preparation required for an application to be heard by the Board of Zoning Adjustment. As its title implies, all the requirements under § 3113 relate to pre-hearing requirements.

7) Chapter 31 then continues through six subsequent sections after § 3113—all relating to the hearing process—and eventually arrives at § 3124, "Post-Hearing Procedures: General Provisions," and § 3125, "Final Decision and Effective Date of Decisions." Relief for applicants whose application have been denied is then detailed in § 3126 which include reconsideration, rehearing, and appeal. No mention nor recognition of the ability to withdraw is given in any of these post-hearing sections.

Effect of Application of Regulation Helps Determine Its Scope

8) The modern approach to statutory construction includes determining what the drafters may have intended when the statute or regulation was written. Given the placement of §3113.10, it is reasonable to conclude that the drafters had only the pre-hearing time period in mind when they chose the language of this regulation. This conclusion is reinforced when the subsequent relief available to an applicant is considered. Subsection 3126.11 prevents an applicant whose application has been denied from instituting a new application for a period of one year. However, if the applicant were able to withdraw its application after a final decision has been entered, then other language in § 3113.10 would shorten that time period to only 90 days. This incongruous result—which only occurs if one assumes an applicant can withdraw an application at that time—would

effectively nullify § 3126.11. It is unlikely the drafters of this regulation intended such a result.

9) Allowing an applicant to use the provisions of § 3113.10 in the context of post-hearing procedures devalues, if not denigrates, the restrictions of the post-hearing provisions. These post-hearing sections restrict the applicant from filing a new application for one year and limit any further consideration to only a rehearing, a reconsideration, or an appeal. To permit an applicant to withdraw during this period of a proceeding effectively permits applicant nullification of the BZA administrative process.

10) In the context of deciding the issue raised in this proceeding, the BZA need not determine precisely when an applicant's ability to withdraw an application under §3113.10 should terminate. It need only determine that an applicant no longer has that right after the record has been closed proposed findings have been filed, and the BZA has met and made an oral decision. To allow an applicant to withdraw after these events have occurred devalues the power of this Board, ridicules the parties and witnesses who participated in the evidentiary process, and increases the overall costs of the administrative proceeding for not only the BZA but all parties involved.

WHEREFORE, the Westminster Neighborhood Association requests that this Board reject the Withdrawal of Amended Application filed by applicant, *post hac vice* to August 7, 2003, and for such further relief as this Board may deem appropriate.

Submitted by,



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CERTIFICATE OF SERVICE

I hereby certify that on the 4 day of September 2003, a copy of the foregoing Comment/Objection to Withdrawal of Application by the Westminster Neighborhood Association was served by facsimile to: Whayne S. Quin, Esq., Holland and Knight, fax number 202/955-5564, and by first class mail, postage prepaid, to:

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