Government of the District of Columbia

OFFICE OF ZONING

441 4TH STREET, N.W.
SUITE 210
WASHINGTON, D.C. 20001
(202) 727-6311

September 17, 2003

Deborah R. Thomas, Chairperson
Philip C. Spalding, Secretary
Advisory Neighborhood Commission 1B
1200 U Street, N.W.
P.O. Box 73710
Washington, D.C. 20056

Re: BZA Application No. 16938 (Most Worshipful Prince Hall Grand Lodge) Withdrawal

Dear Ms. Thomas and Mr. Spalding:

On September 9, 2003, at its regularly scheduled public meeting, the Board of Zoning Adjustment (Board), considered your letters dated September 4, and 5, 2003, regarding the ANC's objection to the withdrawal of the above-cited application. A written transcript of the meeting proceedings on this matter should be available for review on September 23, 2003. Please call Richard Nero on (202) 727-6311, if you have any questions relevant to the foregoing.

SINCERELY,

JERRILY R. KRESS, FAIA
Director, Office of Zoning

rsn
Attachments
cc: Most Worshipful Prince Hall Grand Lodge c/o Whayne S. Quin, Esq.
Westminster Neighborhood Association c/o Lynn H. Johnson, Esq.

BZA
Case No. 16938
Exhibit No. 83

Board of Zoning Adjustment
District of Columbia
CASE NO.16938
EXHIBIT NO.83

ADVISORY NEIGHBORHOOD COMMISSION 1B
GOVERNMENT OF THE DISTRICT OF COLUMBIA
COLUMBIA HEIGHTS / LEDROIT PARK / SHAW / UNIVERSITY HEIGHTS

1B01 Lawrence T. Guyot, Jr.
1B02 Philip C. Spalding
1B03 Catherine Hammonds
1B04 Deborah R. Thomas
1B05 Jarvis Houston
1B06 Theodore "Ted" Butler
1B07 Sertira "Cookie" A. Wilson
1B08 Charles E. Glover
1B09 Sinclair "Nupe" Skinner
1B10 Kelvin P. Esters
1B11 Raymond Wright

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2003 SEP -4 AM 8:59

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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in section 3126 including reconsideration or rehearing, and in subsection 3126.1, "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

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1B11 Raymond Wright

5 September 2003

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

RECEIVED
D.C. OFFICE OF ZONING
2003 SEP -8 AM 8:51

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

Dear Chairperson Griffis:

At its regularly scheduled meeting on September 4, 2003 (notice of which was properly given, and at which a quorum of six of eleven members was present) ANC1B voted unanimously (6-0-0) to ratify the letter delivered to your office earlier on the same day. Notification and deadlines for submission conflicted with our calendar in this instance requiring us to submit the letter prior to full review and decision by the Commissioner's of ANC1B. Later on the day of submission (September 4th) the full text of this letter was considered, discussed and voted on by the Commission, and we ask that you treat the letter as having been both timely received and given full weight.

ANC1B also voted unanimously (6-0-0) to allow Commissioners Guyot and Spalding to act as representatives of ANC1B at the September 9th meeting of the Board of Zoning Adjustment, and at any other time you or other members of the Board wish to discuss the issue of using subsection 3113.10 to allow withdrawal in a post hearing context. Commissioner Spalding has been called to serve at the pleasure of the DC Grand Jury on Monday, September 8th, and if selected to serve will not be able to attend the BZA hearing.

ANC1B requests that you give great weight to our decision to ratify the letter referencing BZA Case 16938 submitted on the morning of September 4th, and that you accord that letter the same weight as one not tortured by the constraints of notification and deadline presented in this instance.

Sincerely,

Deborah R. Thomas, Chairperson

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

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Case No. 16938
Exhibit No. 81