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November 12, 2002

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

Re: **MOTION TO REOPEN BZA APPLICATION NO. 16907**
US Property Development Corporation
1522-1526 14th Street, N.W., Square 209, Lot 98 (the "Property")
Our File No. 092000.0008

Dear Mr. Griffis and members of the Board of Zoning Adjustment:

On behalf of the US Property Development Corporation ("US Property") and for the reasons stated below, we hereby request that the Board reopen the above referenced matter for the purpose of accepting evidence and holding a hearing on additional required relief of a special exception from the rear yard requirements of Section 774.1 of the Zoning Regulations. An amended special exception application has been prepared and filed contemporaneous with this letter for such purpose. For your reference a copy of the Board's order is attached as Exhibit A to the Statement of Reasons in Support of the amended application.

FACTS

In its order in BZA Application No. 16907, the Board granted two area variances from the lot occupancy and residential recreation space requirements of sections 772 and 773 of the Zoning Regulations and a special exception from the ground floor retail requirements of section 1901.1 of the Zoning Regulations to allow the development of a mixed use residential and retail project at the Property. The requested relief, as initially filed, was supported by both ANC 2F and the Office of Planning.[1]

[1] At the hearing, US Property requested additional flexibility with regard to the special exception from the retail requirements, which request was supported by the Office of Planning with conditions.

BZA
Case No. 16969
Exhibit No. 9
Board of Zoning Adjustment
District of Columbia
CASE NO.16969
EXHIBIT NO.9

As set forth in both the written submissions of US Property, as well as the testimony on behalf of US Property in the hearing in this matter, the design of the proposed project has undergone extensive review by the community and, as a consequence, has been significantly modified to meet the concerns of both the community and the Historic Preservation Board.

In anticipation of filing for a building permit, US Property recently submitted a complete set of plans to its third party permit plan reviewer. This review revealed that the height of the projection of the garage into the rear yard is five foot two inches (5'2") and, as a result, a rear yard of only five feet (5') is provided. The height of the projection had not previously been made clear and, as it had not been included in the zoning computations provided for the original submission to the BZA, it was assumed that the height of the projection was below the limit of projections into required open spaces of four feet (4'). *See* 11 D.C.M.R. 2503.1.

DISCUSSION

Section 2503.1 of the Zoning Regulations requires:

> Except for the structures specified, and the exceptions set forth in this section, every part of a yard required under the provisions of this title shall be open and unobstructed to the sky from the ground up.

Section 2503.2 provides, in relevant part, that

> A structure, not including a building, no part of which is more than four feet (4 ft.) above the grade at any point may occupy a yard required under the provisions of this title.

Pursuant to section 774.1 of the Zoning Regulations, a rear yard of no less than twelve feet (12') is required for the Property. Because the portion of the garage extending into the rear yard[2] is over four feet (4') tall, a rear yard of only five feet (5') is provided. Thus, a special exception is required in accordance with section 774.2 of the Zoning Regulations.

As part of the plans for the project, the space above the garage in question will be used as private terraces for the adjoining unit owners. *See* Exhibit B to the Statement of Reasons. Thus, the proposed use of this space has not changed from the initial filing of the original application. Moreover, the adjoining units are the first level of residential use on the rear of the building. Thus, the fact that the parking garage extends into the rear yard does not detract from the use of that space.

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[2] Because the Property is a corner lot the rear yard can be determined by either 14th Street or Church Street. Given that the residential entrance to the building is along Church Street, that is the street used for the determination of the rear yard.

REQUEST FOR EXPEDITED HEARING

Because this matter has received overwhelming community support and undergone extensive review by the community and various government agencies, and given that the issue in the amended application is limited, US Property hereby requests that this amended application be expedited in according with section 3116.1 of the Zoning Regulations. To facilitate an expedited hearing, simultaneously with the filing of this motion and amended application, US Property is forwarding a copy to ANC 2F and the Office of Planning and requesting that the application be taken up for consideration at the ANC's next meeting, as well as a meeting with the Office Planning at the earliest possible date.

Thank you for your consideration of this matter.

Sincerely,

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

Richard B. Nettler
Jeannine Rustad Zigner

Enclosures (as stated)
cc: Mr. Chip Newell (by hand; w/encl.)
Mr. Paul Hoftyzer (by hand; w/encl.)
ANC 2F (w/encl.)
Office of Planning (by hand; w/encl)