BDC BUNDY DEVELOPMENT CORPORATION

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February 3, 2003

Board of Zoning Adjustment
Attention: Ms. Jerrily Kress FAIA and Mr. Richard Nero
One Judiciary Square, Suite 210-South
441 Fourth Street, NW
Washington, DC 20001

RECEIVED
D.C. OFFICE OF ZONING
2003 FEB -3 PM 3:08

Re: Request for Reinstatement of, or Resumption of Consideration of, BZA Case 16973 (Application for Variances and Special Exceptions for Premises 809-813 Sixth Street, NW (Square 485, Lot 46) and Commencement of Hearing (February 11, 2003)

Honorable Members of the Board and Staff:

By this letter, I hereby request that your consideration of the above-captioned case resume and that the Board consider this question on a preliminary basis, as further explained below, during the course of its regular monthly meeting on February 4 2003 and that the case commence, even if time does not allow it to be completed, on February 11, 2003.

On Thursday, January 30, 2003, **Chinatown East LLC** became the fee-simple owner of the property. By the prior Friday afternoon, January 23, I was assured that all settlement questions had been resolved and that settlement would take place on the morning of Tuesday, January 26 – just in time to satisfy all of the Board of Zoning Adjustment's "14-day" rules. Your staff, and those of the Office of Planning, were advised of this over the weekend following January 23 or the morning of Monday, January 27.

Unfortunately, the banker essential to the settlement was involved in a serious, but not life-threatening, automobile accident over that weekend, which I learned late Monday along with the fact that the settlement could not take place as anticipated the following day. I alerted your staff of this Tuesday morning, when Mr. Williams called Mr. Nero, with whom we hoped to meet later that day to present the until previously anticipated news of settlement. Upon being notified January 28 that the settlement would not take place that day, your Executive Director issued a letter that date accepting one of the letters I had written December 31, 2002, and submitted January 2, 2003. Ms. Kress' letter formally declared the case status as "withdrawn."

Two days later, January 28, settlement actually took place, when all those needed to effect the transaction could be reassembled, including the bank's representative.

When initially filed November 26, 2002, BZA application 16793 was submitted by the agent I authorized, Mr. Lindsley Williams. The application was accepted that day by the Board's staff. The Board's staff scheduled hearing for Tuesday, February 11, 2003, composed and mailed Notices to the affected Advisory Neighborhood Commission and those owning property within 200 feet of the premises, and arranged for a copy of the Notice to appear in the ***D. C. Register.***

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Phone: 202-628-1930; www.bundydevelopment.com; Fax: 202-628-0065

BZA
Case No. 16973
Exhibit No. 24

Board of Zoning Adjustment
District of Columbia
CASE NO.16973
EXHIBIT NO.24

Mr. Nero, in addition to asking if we had filed anything in the case record on or before the 14-day mark, discussed posting of the property. Mr. Williams advised him that he had arranged for posting to be accomplished no later than Saturday, February 1. He further explained that the applicant had determined it would file nothing more in the case record after the Executive Director's letter of January 28 until there was reason to believe it would be accepted and considered.

I will maintain the Hearing Placard and provide you an affidavit to that effect five (5) days prior to the February 11, as required by §§ 3113.19 and 3113.20.

While the initial submission was substantial and sufficient for the case to be considered, we believe additional materials can help with your understanding of the case. When these materials are placed into the record, the applicant will be very close to being able to simply move applicant's materials into evidence and "stand on the record." Thus, our direct presentation should not require much time. Copies of the additional materials that we would file with the Board are being provided directly to the Office of Planning and the ANC. (Their copies will be provided independent of whether they are formally submitted to the record of the case.)

ANC 6C's Planning and Zoning Committee met the evening of January 28, and we presented our plans to them at that time, noting uncertainty as to whether the case would proceed or not. That committee indicated it would provide a favorable recommendation to the full ANC upon receipt of hard copies of the application and supplemental materials and an indication that the case could proceed. The ANC as a whole meets the evening of February 4, 2003, prior to the scheduled hearing before the Board of Zoning Adjustment ("BZA"). We will advise the ANC of any preliminary determination the Board or its staff make earlier that day about the status of the case and the hearing initially scheduled for February 11 as soon as it is communicated to us.

We believe that the ANC itself could provide the BZA with a report and recommendations on or before February 11.

Thus, resumption of consideration of the issues raised in BZA 16973 and proceeding as planned, when planned, seems more orderly than postponement to a later date or as a separate matter.

The BZA, for cause, may waive its rules, pursuant to § 3100.5. Such a waiver, if formally required, is justified here. The rules in question include those at §§ 3113.3 and 3113.4, stating that "An owner of property for which application is made may file an application with the Board" and then stating that "An authorized agent may file an application on behalf of an owner." None of § 3113 falls within the § 3100.5's restrictions on rule waivers.

Since we did not meet the normally required 14-day filing of supplemental materials, the applicant would also seek a waiver to accept those additional materials seven days before the scheduled hearing (§ 3113.8) and from the requirement to post the property starting 15 days prior to the date of the hearing (§ 3113.14). Significantly, both of these requirements also fall within the range of rules that you can waive. We would also recommend that you accept any request made by the Office of Planning to file the report later than required by § 3114.2, which is also a "waivable" provision.

When the application was filed, my letter authorizing Mr. Williams to file clearly set out that I was the "contract purchaser." When filed, my purchase was to be completed by mid-February, 2003. Prior to filing, all relevant commitments had been made and there were no remaining substantive contingencies. Being eager to get construction underway if your approval were forthcoming, I requested the first available hearing date. In fact, the Board of Zoning Adjustment ("BZA") was able to schedule the case before settlement was originally required (by the terms the purchaser and seller had agreed to).

Now, as owner, I request that my prior letters to you dated December 31, 2002, under the letterhead of my firm, Bundy Development Corporation together with the Executive Director's acceptance of one of them, dated January 28, 2003, about this application (a) be supplanted and (b) that the case be heard as scheduled, but in the name of the entity now owning the land, **Chinatown East LLC**.

The nature of the zoning relief sought is unchanged. The plans are unchanged. The location of the property is unchanged. The owners of nearby properties are the same, and they have already been notified. The only change is that of ownership itself. And, now as owner, I am prepared to meet with you to seek your approval and incur whatever conditions you determine as appropriate that would run with this land and property on behalf of **Chinatown East LLC**.

For your information, Mr. Colbert and I have submitted the project for consideration by the Historic Preservation Review Board ("HPRB"). In fact, we appeared twice before HPRB.[1] The first project would have required little, if any, zoning relief, proposing a project that utilized the entire 90 foot height limit prevailing in the Arts/R-5-E zone.[2] HPRB's reaction and initial "conceptual" guidance was clear: **Reduce the height and relocate the entrance to the garage.** We returned to HPRB with a second plan that provided two fewer full stories. That plan also "produced" two of the variances the case seeks, since the revised project occupies the entire lot area and no longer provides any of the rear yard normally required. That plan also relocated the entrance to the parking garage from the east-west alley at the south of the property to the somewhat wider north-south alley to the east of the property, elevating the threshold of the entrance by almost one foot due to changes in natural grade. HPRB approved the second plan, the one we submitted to you in November as part of our initial application to the Board of Zoning Adjustment.

Throughout all of this, continuing to now, I was in contact with area community organizations. The plan reflects their input as well.

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1 The Historic Preservation Review Board's rules do not explicitly require that applicants be owners or their agents (see, for example, their proposed rules at ***10 DCMR 2604.4(g)***, which provides merely that staff determine that applications are "complete" and that the applicant has paid the required fee before accepting them).

2 I had not engaged Mr. Williams as a zoning consultant at the time the initial application was filed before HPRB. Mr. Colbert's focus was on designing a project that could satisfy both HPRB and the contrasting "Chinatown" design guidelines. At that stage, his focus was not on the intricacies of the DD overlay zone's provisions as they turn out to apply to the site, which Mr. Williams identified after being engaged in November 2002.

When being considered by HPRB over the Fall of 2002, the site was located within the boundaries of Advisory Neighborhood Commission ("ANC") 2C. Redistricting, effective January 2, 2003, resulted in a shift of the project, which now is located within the boundaries of ANC 6C, specifically Single Member District ("SMD") 6C-09. The ANC Commissioner for that SMD is Charles Docter.[3] Mr. Williams and I have kept Commissioner Docter apprised of both the suspension of BZA processing and this request that it resume. Likewise, we have kept staff of the Office of Planning advised, alerting the assigned staff planner over the weekend of January 24-25 and again January 31 (email and office voicemail).

Mr. Williams called Mr. Nero on Friday, January 31, to alert him to the fact of settlement the prior day. He would have called on January 30 but already knew that Mr. Nero was absent that day due to illness. Mr. Nero remained ill on Friday, but Mr. Williams conveyed basic information to staff about the ownership issue. Thankfully, staff elected to contact Mr. Nero and he, in turn, telephoned Mr. Williams to discuss possible next steps. Mr. Nero suggested that I submit a letter requesting the BZA to reinstate the case. Mr. Williams suggested to Mr. Nero that the letter also ask the BZA if it was willing to reach a *preliminary* conclusion on this point at some point during its public meeting and hearing when assembled for those purposes on Tuesday, February 4th.

This letter requests that:

- On February 4th the BZA give preliminary attention to the resumption of processing of the case when gathered to consider other cases.

- On February 11th the BZA further determine at the start of the hearing[4] if the interests of any other person or organization interested in the case would be incurably harmed by having the case proceed to be heard, and possibly decided, as originally planned. Assuming not, the case could at least begin "on course."

Assuming a favorable preliminary determination on February 4, the applicant would provide the BZA with supplemental materials, copies of which were provided to the ANC and the Office of Planning on February 3rd. If the BZA makes no determination during February 4th, the applicant would also file the supplemental materials. However, the applicant would not file supplemental materials in the record if the BZA, on February 4, were to determine that the case would not be heard February 11.

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3 The Board sent Commission Docter a copy of the Notice about BZA Case 16973 since the ANC had not yet established a mailing address for the just constituted ANC as a whole.

4 The Board has scheduled three cases for the morning of February 11, 2003: BZA 16948, BZA 16976, and the case in question, BZA 16973. BZA 16973 is the last case listed. The afternoon is reserved for a single case, BZA 16970. While we would hope to be heard that morning or that day, the most critical thing is that the case be called February 11 and that any parties be established (we know of no opposition). If necessary, the case could then be "continued" to another date, perhaps later in February. We particularly wish to avoid anything that would require the case to be refiled and "start over."

I would also like this letter to reaffirm the roles I have asked Mr. Williams and Mr. Colbert to assume in this case. As you know, I had authorized Mr. Williams to file the initial application and represent my interests and Mr. Colbert to be the architect. If you need me to sign and date specific forms already in the record in the name of **Chinatown East LLC**, I will be glad to do so.

Thank you for your consideration.

Respectfully yours,

Pamela D. Bundy
Managing Member
Chinatown East LLC

cc: ANC 6C-09 (Commissioner Charles Docter)
Mr. Williams
Mr. Colbert
Office of Planning