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19 February 2003

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Chair Griffis and Members of the Board of Zoning Adjustment
441 4th Street, NW – Suite 200
Washington, DC 20001

RE: Case No. 16982
APPEAL OF J. BRENDAN HERRON, JR. AND ANC 3F
VS.
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
Regarding 2900 and 2902 Albemarle Street, NW

Dear BZA Members:

On January 29, 2003, would-be intervenor, Zuckerman Brothers, Inc. (Zuckermans), filed a Motion to Schedule Hearing on Motion to Dismiss and Postpone Public Hearing on the Merits asking that instead of getting on with this appeal on March 4, 2003, as previously scheduled, the Board of Zoning Adjustment (BZA) hear oral argument on the question whether to dismiss the appeal but put off consideration of the merits to some future date. Zuckermans advise that Appellee, the Department of Consumer and Regulatory Affairs (DCRA), concurs in their request.

We understand that the BZA will rule on this motion, as well as Zuckermans' request to intervene, as preliminary matters during the March 4, 2003, hearing.

Although we will oppose the Motion to Dismiss, Appellants (J. Brendan Herron, Jr. and ANC 3F) do not object to the proposal to hear and decide the Motion to Dismiss on March 4, before reaching the merits, provided that the hearing on the Motion to Dismiss not be limited to oral argument. Appellants reserve their right to present evidence, as well as oral argument, addressing standards recently codified by the Zoning Commission (ZC) in 11 DCMR § 3112.2 (published on February 7, 2003, and effective as of that date) in 50 DCR 1200.[1]

Morever, Appellants ask that the record made on the Motion to Dismiss be considered by the BZA on the merits and that the BZA proceed as quickly as possible to complete presentation of the merits (assuming that the BZA denies the Motion to Dismiss or defers its consideration until after

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[1] The ZC acted by its Order No. 02-01 (adopted at a public meeting on September 9, 2002) which explains the new rule and rejects certain interpretations and proposals urged by the law firm of Holland and Knight LLP.

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Board of Zoning Adjustment
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EXHIBIT NO. 18

hearing interrelated issues on the merits). Specifically, we ask that the BZA at least begin its consideration of the merits on March 4, and that it schedule a second public hearing, as soon after March 4, 2003, as possible, if such a second hearing be necessary.

These procedures will most efficiently use the time and resources of the BZA and the parties in the public interest while avoiding dilatory tactics.

Although the snow storm has disrupted our preparations, Appellants will file this afternoon or tomorrow their Opposition to Motion to Dismiss and expect to file their Pre-Hearing Statement by the end of the week. We request the BZA's indulgence.

Respectfully submitted on behalf of the Appellants,

David J. Bardin, Secretary, ANC 3F

c:
David Clark, Director, DCRA
Karen Edwards, Esquire, General Counsel, DCRA, and
Laurie Gisolfi Gilbert, Esquire, Agency Counsel, DCRA
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