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26 February 2003

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

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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 February 24, 2003, would-be intervenor, Zuckerman Brothers, Inc. (Zuckermans), filed a Motion asking this Board to strike two documents filed by Appellants, ANC 3F and J. Brendan Herron, Jr.: (a) Our Opposition of Appellants to Motion to Dismiss filed February 20 and (b) our Pre-Hearing Statement filed February 21. Zuckermans' latest Motion claims that both of these filings came too late, under 11 DCMR § 3112.10. That Motion should be denied.

Zuckermans argue that both of our filings were due by February 19.

The Pre-Hearing Statement was due by February 19. But that day we filed a letter with this Board (and both e-mailed and mailed it on the same day to Zuckermans' counsel whose present Motion does not to mention it). We explained that, "Although the snow storm has disrupted our preparations, Appellants ... expect to file their Pre-Hearing Statement by the end of the week. We request the BZA's indulgence." And that is what we did, filing (and e-mailing as well as mailing) by the end of the week. We now renew our request. The § 3112.10 deadline is not jurisdictional and may be waived. We respectfully request that the Board accept our Pre-Hearing Statement.

As to our Opposition to Motion to Dismiss, we believe that § 3112.10 does not even apply. Under the Rules, we could have waited until March 4, which is exactly what Zuckermans proposed four weeks ago-- before weighing the force of our arguments as to timeliness.

Respectfully submitted on behalf of the Appellants,

David J. Bardin, Secretary, ANC 3F

BZA
Case No. 16982
Exhibit No. 23

Board of Zoning Adjustment
District of Columbia
CASE NO. 16982
EXHIBIT NO. 23

c: Laurie Gisolfi Gilbert, Esquire, counsel for DCRA
John T. Epting, Esquire, counsel for Zuckerman Brothers, Inc.