District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Washington, D.C. 20001

BZA 16990

GARLAND F. PINKSTON
CLERK OF COURT

Telephone: 879-2700
Area Code 202

November 21, 2003

NO. 03-AA-1274 American Towers Inc. vs. DC Board of Zoning Adjustment

District of Columbia Board of Zoning Adjustment
Jerrily Kress, Director
441 - 4th Street, N.W.
Suite 210S
Washington, D.C. 20001

Dear Sir/Madam:

Pursuant to the rules of this Court I am transmitting, herewith, a copy of the petition for review filed on November 18, 2003, in the above-entitled case.

Yours very truly,

Garland F. Pinkston
Clerk of Court

By: _____
Information Center Supervisor

cc: Edward Schwab, Esq.

BZA
Case No. 16990
Exhibit No. 41

Board of Zoning Adjustment
District of Columbia
CASE NO. 16990
EXHIBIT NO. 41

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

AMERICAN TOWERS, INC.,

Petitioner,

v.

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT,

Respondent.

RECEIVED
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DISTRICT OF COLUMBIA
COURTS OF APPEALS

No. 03AA1274

PETITION FOR REVIEW OF AN ORDER OF
THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

1. This Petition seeks review of a Decision and Order of the District of Columbia Board of Zoning Adjustment ("BZA" or "Board"), an agency of the District of Columbia Government.

2. This Court has jurisdiction over this matter under D.C. Code § 11-722, which provides for review in this Court of orders and decisions of any agency of the District of Columbia, including the Board of Zoning Adjustment.

3. The party seeking review is American Towers, Inc. ("Petitioner" or "American Towers").

4. American Towers seeks review and reversal of the BZA Decision and Order (dated June 25, 2003, reconsideration denied October 20, 2003) (the "BZA Decision") dismissing Appeal No. 16990 of Americans Towers, Inc., as untimely.

5. In 2000, American Towers was issued permits by the Department of Consumer and Regulatory Affairs (DCRA) to build a broadcast and telecommunications tower in

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the Tenleytown area of Washington, D.C. A group of citizens opposed to the permits thereafter filed an appeal to the BZA (Case No. 16649).

6. In October 2000, the DCRA issued a stop work order and rescinded American Towers' permits on the ostensible grounds, inter alia, that the tower violated side-yard setback requirements mandated by Section 775.5 of the Zoning Regulations. The setback requirements in fact were not applicable to the tower, and the District had never before applied those requirements to such a tower.

7. By letter, on October 25, 2000, and in accordance with BZA rules and practice, American Towers became a party to appeal Case No. 16649. American Towers' intention and understanding was that Case No. 16649 would encompass all zoning issues regarding the permits and stop-work order, including the citizen group's objections to the issuance of the permits and American Towers' objections to the stop-work order and the rescission of the permits.

8. American Towers thereafter brought suit in the United States District Court, and later in the Superior Court, to challenge the stop-work order and rescission of the permits. American Towers asked the BZA to stay Case No. 16649 pending resolution of judicial proceedings. The case was stayed by the BZA.

9. Throughout judicial proceedings initiated by American Towers, the District argued that the courts should not review the claims of American Towers until American Towers exhausted its administrative remedies, that American Towers had indeed brought an appeal challenging the rescission, and that American Towers should be required to exhaust its administrative appeals before proceeding in the courts. See American Towers, Inc. v. Williams, 146 F.Supp.2d 27, 30 n. 1 (D.D.C. 2001) (noting District's exhaustion argument).

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10. In November 2002, the citizen group that brought Case No. 16649 purported to withdraw its appeal. The BZA never issued a decision actually dismissing their appeal.

11. Thereafter, American Towers learned from the BZA staff that the BZA did not intend to issue any final order actually dismissing case No. 16649, but was treating the case as dismissed. American Towers then filed a new appeal (Case No. 16990).

12. The District moved to dismiss case No. 16990 on the grounds that it was untimely, despite the fact that the District had argued in the federal courts that American Towers had in fact filed an effective appeal with the BZA. In the BZA decision, the BZA granted the District's motion to dismiss and thereafter denied American Towers' motion for reconsideration of that ruling on the grounds that the BZA lacked jurisdiction to hear an appeal from American Towers because American Towers failed to properly file its own appeal by December 11, 2000.

13. The BZA decision dismissing American Towers' appeal (hereinafter "BZA Decision") is unlawful and should be set aside on the grounds that it was contrary to the law and facts, arbitrary, capricious, and an abuse of discretion:

a) The BZA was wrong to hold that American Towers had not timely appealed through its participation in Case No. 16649;

b) The BZA was wrong that Case No. 16990 was not timely filed;

c) The BZA was wrong to entertain the District's motion to dismiss American Towers' appeal because the District was barred by judicial and equitable estoppel from claiming that American Towers had not filed a timely appeal to the BZA;

d) The BZA's findings of fact were not supported by substantial evidence in the record;

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e) The BZA's findings of fact were contrary to the evidence of record;

f) The BZA's findings of fact were based on evidence not in the record;

g) The BZA ignored relevant evidence in making its findings of fact;

h) The BZA failed to give proper consideration to the District's prior admission that an appeal had been filed by American Towers;

ACCORDINGLY, Petitioner respectfully requests that this Court reverse and vacate the BZA Decision dismissing American Towers' appeal of the rescission of its construction permits.

Respectfully submitted,

Eric Von Salzen (DC Bar #13482)
Jason C. Chipman (DC Bar # 462954)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition For Review Of An Order Of The District of Columbia Board of Zoning Adjustment was mailed, postage prepaid, this 18th day of November, 2003, to the parties who formally participated in the proceedings before the agency (other than the agency and the District of Columbia Corporation Counsel, who will be served by the Clerk of the Court, pursuant to this Court's Rule 15(e)):

No other parties participated in this appeal.

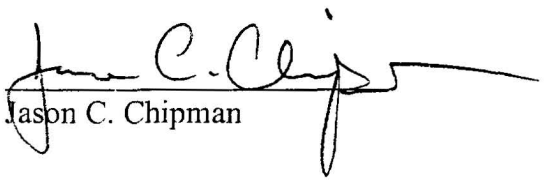
The following individuals and groups, other than the agency and the District of Columbia Corporation Counsel, who will be served by the Clerk of the Court, pursuant to this Court's Rule 15(e)), who were served with orders by the Board of Zoning Adjustment will be served by first class mail:

Chairperson
Advisory Neighborhood Commission 3E
P.O. Box 9953
Washington, D.C. 20001

Kathleen Patterson, City Councilmember
Ward Three
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Washington, D.C. 20004

Ellen McCarthy, Deputy Director
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Acting Zoning Administrator
Building and Land Regulation Admin.
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002



Jason C. Chipman