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June 3, 2003

BY FAX

D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington D.C. 20001

10:6 AM 3 JUN 03

Re: BZA Application No. 17012
1301-1309 9th Street, N.W.

Dear Members of the Board:

The Applicant in the above-referenced case, Jemal's Benjo LLC, is in receipt of a Supplemental Report, dated May 16, 2003, and received by the Board on June 2, 2003, at 4:46 P.M., from the Office of Planning (OP) to the Board, recommending that the Board approve the variance from non-residential FAR limited to the basement, first and second floors only. The Applicant respectfully requests that this Supplemental Report be excluded from the record in this case as untimely filed and that the Board grant the application without reference to the OP Supplemental Report. In the alternative, if the Board is inclined to receive the Supplemental Report into the record and use it as a basis to decide the application, the Applicant requests that the Board not deliberate upon the application today, until the Applicant has had an opportunity to respond to the OP Supplemental Report.

The subject application was heard by the Board on May 20, 2003. At the conclusion of the hearing, the Board left the record open (1) for the Applicant to address whether parking is required for the project; and (2) for OP to file a supplemental report addressing whether the Applicant had provided a reasonable economic basis to support allowing half of the third floor to be used as offices. The Board specified at the hearing that these submissions were to be filed no later than May 28, 2003, and that the Applicant would have until early Monday, June 2, 2003, to respond, if it so desired.

BZA
Case No. 17012
Exhibit No. 49

Board of Zoning Adjustment
District of Columbia
CASE NO. 17012
EXHIBIT NO. 49

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The Applicant filed its response on the parking issue on May 28, 2003. On Monday, June 2, 2003, at 4:46 P.M., OP filed its Supplemental Report with the Board. At approximately that same time, the Applicant received by fax from OP a copy of the Supplemental Report, bearing the date of May 16, 2003.

The Rules of the Board (11 DCMR § 3121.9) clearly operate to exclude the OP report: "Any material received by the Board after the close of the record that bears upon the substance of the appeal or application shall be returned by the Director and not received into the files of the Board." The report should not be received or considered by the Board, and the Board should grant the application based on the record made at the public hearing and the timely post-hearing submission of the Applicant.

Alternatively, if the Board is inclined to waive the Rules and receive and consider the Supplemental Report, due process requires that the Applicant must be afforded the opportunity to respond to the OP report. See 11 DCMR 3121.6: "The Board shall allow all parties to a case an opportunity to file written responses to any exhibits, information, or briefs submitted after the close of the hearing." (emphasis added)

The Applicant therefore respectfully requests that the Board either grant the application without reference to the OP Supplemental Report or allow the Applicant time to respond to the OP Supplemental Report. In the latter event, the Applicant is prepare to respond in such time frame as the Board determines.

Sincerely,

Norman M. Glasgow, Jr.

Dennis R. Hughes NMG, Jr.

Dennis R. Hughes

cc: Office of Planning (by fax)
Advisory Neighborhood Commission 2C

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MESSAGE:

ATTENTION: RICK NERO

RE: CASE #17012 TO BE DECIDED TODAY.