ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

ATTORNEYS AT LAW

SUITE 1200
1801 K STREET, N.W.
WASHINGTON, D.C. 20006-1307
TEL: 202-775-0725 FAX: 202-223-8
www.rkmc.com

RICHARD B. NETTLER
JEANNINE RUSTAD
(202) 775-0725

April 7, 2005

BY HAND
Ms. Carol J. Mitten
Chairperson
Zoning Commission
441 4th Street, NW, Suite 210
Washington, DC 20001

RECEIVED
D.C. OFFICE OF ZONING
2005 APR -7 PM 3:21

Re: BZA Application No. 17271
Objection to Sua Sponte Review Request
Our File No. 092218.0012

Dear Ms. Mitten:

We have been informed by the Office of Zoning that the Architect of the Capitol (the "Architect") has requested that the Zoning Commission (the "Commission") *sua sponte* review the order in BZA Application 17271. Pursuant to section 3128.3 of the zoning regulations, we submit the following objections to this request on behalf of the Applicant, JBG/Louisiana Avenue, L.L.C. ("JBG").

In review decisions of the Board of Zoning Adjustment (the "Board"), the zoning regulations set forth the following guidelines to determine whether the Commission should invoke its *sua sponte* review authority:

> (a) In a particular instance where it appears to the Commission that the Board has exceeded its prerogatives and has thus in effect changed the zoning;
>
> (b) Where it appears that a basic policy of the Commission, as expressed in the Zoning Regulations, has been violated as a result of action by the Board; or
>
> (c) In an unusual instance, as determined by the Commission.

11 DCMR § 3128.7. In the instant matter, none of these criteria apply. The Board did not exceed its prerogatives, effectively changing the zoning. Nor did the Board violate any basic principle of the zoning regulations. To the contrary, the Board's granting of the height variance is consistent with the zoning regulations and map. Moreover, the Board based its decision on the evidence in the record. Finally, as illustrated below, there are no unusual circumstances, other than the Architect's failure to participate or offer evidence to support its unsubstantiated claims. Having had full opportunity to participate, the Architect, as a represented member of the

BZA
Case No. 17271
Exhibit No. 34

Board of Zoning Adjustment
District of Columbia
CASE NO. 17271
EXHIBIT NO. 34

As a final matter, the Applicant believes it is appropriate for Commissioner Hildebrand to recuse himself from the Commission's deliberations, given Commissioner Hildebrand's involvement before the Board.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler
Jeannine Rustad

Enclosures (as stated)
cc: Office of Planning: Ms. Ellen McCarthy
Alan Bergstein, Esquire
Mr. Benjamin Jacobs
Mr. Dean Cinkala
Mr. Kai Reynolds
Mr. John Wilkinson
(The above by hand with enclosures)
ANC 6C (w/encl.)

Commission, cannot be allowed to circumvent the zoning regulations to invoke the Commission to review the Board's decision.

As previously noted, the Architect did not participate in the proceedings before the Board. Rather, the Architect simply submitted a letter objecting to the requested relief and urging the Board to deny the application based on the speculation of the Senate Sergeant at Arms that the "lines of sight that would be created from the roof and penthouse of the proposed structure would present a serious security risk to the Senate wing of the Capitol." *See* Exhibit 1. The Architect did not provide any supporting evidence that such a risk was, in fact, created by the proposed addition subject to the application. Nor did the Architect apply for party status or testify at the hearing.

Upon receipt of a copy of the Architect's letter to the Board, JBG made several unsuccessful attempts to meet with the Architect. Being unsuccessful in these efforts, JBG retained Dusebella, Venturui and Santori ("DVS"), security consultants to the Department of Justice, Department of State, the Department of Transportation, the Internal Revenue Service, the Secret Service, the U.S. Marshal, the Federal Protective Service, to review any security issues presented by the proposed project. DVS submitted a detailed report on the security of the proposed addition subject to the application. At the hearing, George Dove testified as to this report, as well as the sight line issues. *See* Transcript at 49-59. Additionally, Dean Cinkala of JBG testified as to the security measures that would be provided at the subject property. *See* Transcript at 25-30. This evidence was unrefuted. The Board's order illustrates that the Board properly weighed the evidence in the Record.

This case does not present an "unusual instance", as contemplated by section 3128.7 of the zoning regulations. To the contrary, an unusual instance would be created if the Commission were to exercise its powers of *sua sponte* review in light of the overwhelming evidence in this case. In the instant matter, we have a non-party to the proceedings (again, one who is a member of the Commission) before the Board asking for *sua sponte* review of an order that addressed all the issues and evidence with an extraordinary attention to detail. More importantly, the Architect is asking for this relief despite having failed to present any evidence to the Board to support its unsubstantiated claim of a security threat. The Architect was in no way denied opportunity to appear before the Board but, rather, chose not to do so. Once again, the Board received strong evidence that the Architect's concerns were unfounded. Given the evidence received and the Architect's failure to participate, the Board acted properly.

What's more particular about the Architect's approach in this matter is that neither the Architect nor the Sergeant at Arms participated in the proceedings before the Commission of Fine Arts ("CFA"), the federal agency charged with reviewing private buildings adjacent to public buildings and grounds of major importance. CFA approved, in concept, the project subject to this application. *See* Exhibit 2.

Exhibit I

Washington, DC 20515
January 3, 2005

RECEIVED
D.C. OFFICE OF ZONING
2005 JAN -4 PM 12: 36

Mr. Geoffrey H. Griffis, Chairman
Board of Zoning Adjustment
Office of Zoning, District of Columbia
441 4th Street NW; Suite 210 South
Washington, D.C. 20001

Re: BZA Case 17271 - JBG/Louisiana
51 Louisiana Avenue NW
Opposition to Requested Variance from Building Height Limitation

Dear Chairman Griffis,

Mr. George Dove of WDG Architects contacted my office regarding a proposed addition to an existing building at 51 Louisiana Avenue, NW. It is my understanding that the owner will request a variance from the current 110' height restriction for that site. The proposed variance would allow the applicant to build to the maximum height established by the 1910 Height of Buildings Act. which is 130' for Louisiana Avenue. The penthouse of the addition would rise an additional 18' - 6" above the 130' level.

As you know, the proposed addition is adjacent to the Senate park section of the Capitol Grounds. We have reviewed the proposed addition and the height variance with the Senate Sergeant at Arms and have been advised that they strongly object to the variance. The lines of sight that would be created from the roof and penthouse of the proposed structure would present a serious security risk to the Senate wing of the Capitol.

Therefore, we strongly urge you to deny the requested height variance and maintain the existing zoning envelope allowed for this site.

Sincerely,

Alan M. Hantman, FAIA
Architect of the Capitol

cc: Mr. William H. Pickle, Senate Sergeant at Arms
CMR: 04-12-29-13-01

BZA
Case No. 17271
Exhibit No. 21

Exhibit II

THE COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS 17 MAY 1910

NATIONAL BUILDING MUSEUM
401 F STREET, N.W., SUITE 312
WASHINGTON, D.C. 20001-2728

202-504-2200
202-504-2195 FAX

6 December 2004

Dear Mr. Jacobs:

During its meeting of 18 November 2004, the Commission reviewed and approved the proposed concept (S.L. 05-009) for a new 12-story office building to replace the existing 4-level parking garage at 51 Louisiana Avenue, NW. The Commission appreciates the clarity of the design and encourages the strong statement of contemporary design with the inclusion of environmentally-conscious features. The Commission looks forward to more information regarding this project including the development of the elevations and the roof configuration.

The Commission recommends submission of a revised concept as the project develops. Our next meeting is scheduled for Tuesday the 25th of January 2005, with a submission deadline on the 6th of January. As always, the staff is available should you require guidance.

Sincerely,

Frederick J. Lindstrom
Acting Secretary

Mr. Benjamin R. Jacobs
The JBG Companies
4445 Willard Avenue, Suite 400
Chevy Chase, MD 20815-3690

cc: Lord Richard Rogers, Richard Rogers Partnership