BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of: Phillips Park LLC successor to First Capital Trust, LLC

BZA Application No.: 17276
Decision Date: April 5, 2005

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MOTION TO STRIKE SUBMISSIONS OF ANN HAAS

As stated in the Applicant's Motion to Strike Submissions of the Friends of Whitehaven dated March 30, 2005, at the conclusion of the March 8, 2005 hearing, the Board left the record open for the limited purpose of the submission of proposed findings of fact and conclusions of law by the parties; any argument regarding the authority of the Board to condition its order on matters related to construction; and a response to proposed conditions already submitted and any construction agreement reached by the parties. No new evidence was requested by the Board. Contrary to the instructions of the Board, on March 28, 2005, the Friends of Whitehaven ("FOW") submitted materials in addition to their proposed findings of fact and law that goes beyond what was authorized by the Board, including a Declaration of Julie H. Moore. Based on the Board's limited instructions, the Applicant moved to strike the FOW's submissions that went beyond findings of fact and conclusions of law.

On March 28, 2005 (received by the Applicant on April 1, 2005), Ann Haas, the single member district ANC commissioner for the Property, submitted the same Declaration of Julie H. Moore, as previously submitted by the FOW. As with the FOW, Ms. Haas is seeking to do what was expressly prohibited at the last hearing on the application when the record was closed. In that regard, Ms. Moore sought to provide additional testimony after the Applicant's rebuttal testimony. The Board refused to allow her to do so pointing out that the Applicant had the last

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Exhibit No. 66

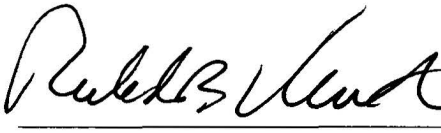
Board of Zoning Adjustment
District of Columbia
CASE NO. 17276
EXHIBIT NO. 66

word on the presentation of evidence at the hearing. *See* 11 D.C.M.R. § 3320.9 (b)(7). The submission of a Declaration or any "clarifications" of evidence, which is not subject to cross-examination, violates this Board's order and the administrative due process rights of the Applicant.

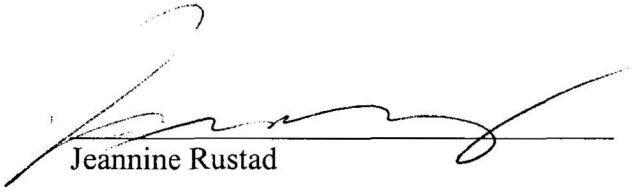
For the foregoing reasons, the Applicant respectfully requests that the Board strike the Declaration of Julie H. Moore and either strike the proposed findings submitted by Ms. Haas that represents new evidence or does not accurately reflect the evidence of the record.

Respectfully submitted,

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



Richard B. Nettler



Jeannine Rustad

1801 K Street, N.W.
Suite 1200
Washington, D.C. 20006
(202) 775-0725

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2005, a true and accurate copy of the foregoing Motion to Strike was served by hand on:

Alma H. Gates
Chairperson
ANC 3D
4911 Ashby Street, N.W.
Washington, DC 20007

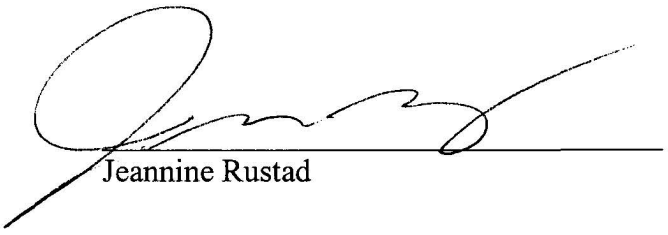
Ann Haas
ANC 3D09
1601 45th Street
Washington, DC 20007

Ms. Chandra Hardy
2001 Foxhall Road, NW
Washington, D.C. 20007

Friends of Whitehaven
c/o William Snape, III, Esquire
5268 Watson Street, NW
Washington, DC 20016

Certain Residents of W Street, NW
c/o Maggie Brady
2202 Foxboro Place, NW
Washington, D.C. 20007

Joel Lawson
Office of Planning
801 North Capitol Street
Washington, D.C. 20001



Jeannine Rustad