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*Building Better Communities Through Affordable Housing*

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April 26, 2005

**HAND DELIVERY**

Jerrily R. Kress, FAIA
Director, Office of Zoning
441 4th Street, N.W., Suite 210
Washington, D.C. 20001

Re: BZA Application No. 17302 (2750 14th Street, N.W.) NPCDC

Dear Ms. Kress:

Thank you for your letter of April 25, 2005, advising me that Carol J. Mitten, the chairperson of the Zoning Commission, has called a special public Zoning Commission meeting on April 29, 2005, at 10 A.M. to discuss whether to sua sponte review the Board of Zoning Adjustment's final decision in the above-cited matter. We understand, based on your letter, that the Zoning Commission's proceeding will be heard consistent with 11 D.C.M.R. § 3128.

Pursuant to 11 D.C.M.R. 3128.1, the Zoning Commission may, sua sponte, determine to review any final decision or order of the Board of Zoning Adjustment (the "Board") within the ten (10) day period set forth in 11 D.C.M.R. § 3125.9. Eleven D.C.M.R. § 3125.9 provides that no order of the Board shall take effect until ten (10) days after it becomes final pursuant to 11 D.C.M.R. § 3125.6. Further, 11 D.C.M.R. § 3125.6 provides that a decision or order of the Board shall be and become final upon its filing in the record and service upon the parties. As such, any sua sponte review by the Zoning Commission of a final decision of the Board pursuant to 11 D.C.M.R. § 3128 must be brought within ten (10) days of Board's decision being filed of record and served upon the parties.

In this particular instance, the decision of the Board is in the form of Summary Order that was decided on April 12, 2005, filed in the record on April 12, 2005, and served upon the parties on April 12, 2005. The Summary Order clearly identifies on its face that its Final Date is April 12, 2005. Further, the Summary Order clearly identifies on its face that, pursuant to 11 D.C.M.R. § 3125.9, the Summary Order will become effective ten (10) days after it becomes Final. According to rules for the computation of time provided in 11 D.C.M.R. § 3110, et. seq., the last day of the ten (10) day period after the Final Date of the Summary Order was Friday, April 22, 2005. As such, pursuant to

THE NON-PROFIT COMMUNITY DEVELOPMENT CORPORATION of WASHINGTON, D.C., INC.

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BZA
Case No. 17302
Exhibit No. 32

Board of Zoning Adjustment
District of Columbia
CASE NO. 17302
EXHIBIT NO. 32

11 D.C.M.R. § 3125.9, the Summary Order of the Board is now effective. Further, pursuant to 11 D.C.M. 3128.1, the ten (10) day period during which the Zoning Commission may determine to sua sponte review of the Summary Order has now passed in its entirety.

As a result of the foregoing, if the Zoning Commission decides, in its scheduled meeting on Friday, April 29, 2005, to pursue a sua sponte review the above referenced decision, and it will be exceeding the scope of its administrative authority to do so under 11 D.C.M.R. § 3128.1 because it will have failed to have made the determination to do so within the ten (10) day period set forth in 11 D.C.M.R. § 3125.9. Moreover, such a decision by the Zoning Commission at this point in time would be highly prejudicial to the parties in this action. Our organization is already acting in reliance upon the fact that the Summary Order became effective on April 22, 2005, by modifying building plans and negotiating leases based on the effectiveness of the Summary Order. Given the deadlines of our on-going construction and our reliance on the effectiveness of the Summary Order under 11 D.C.M.R. § 3125.9, if the Zoning Commission decides, on Friday, April 29, 2005, to sua sponte review the decision of the Board, we are prepared to bring any and all necessary legal action against the Zoning Commission to enforce the terms of the D.C. Administrative Procedure Act and stop the Zoning Commission from acting beyond the scope of its administrative authority.

If you should have any questions regarding the foregoing, please do not hesitate to contact me.

Sincerely,

Walter Johnston
Program Director Affordable Housing

cc: Geoffrey H. Griffis
Jim Graham
Phil Spalding
Gus Ventura
Alan Bergstein, Esq.
Michelle Owens

bcc:

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