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BY HAND

Chairman Geoffrey Griffis
and Members of the Board of Zoning Adjustment
441 Fourth Street, N.W.
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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17317
EXHIBIT NO. 22

Re: BZA Appeal No. 17317 (the "Appeal"), Washington Harbour Condominium Unit
Owners' Association

Dear Chairman Griffis:

On behalf of Washington Harbour Condominium Unit Owners' Association (the "Association"), we are writing in response to an October 19, 2006 letter from William J. Harnett, a resident of the Association (marked as Exhibit 21 for the Appeal) and to provide a follow up to the Association's Pre-Hearing Statement for the Appeal.

We reiterate that all parking spaces in the Association's parking garage, including the five parking spaces created by the Association in 2004, are in full compliance with the provisions of Title 11 of the District of Columbia Municipal Regulations (the "Zoning Regulations") cited on the Notice of Violation and Notice to Abate issued by the District of Columbia Zoning Administrator on January 4, 2005 (the "Notice") and all other applicable provisions of the Zoning Regulations. The Pre-Hearing Statement details compliance with each applicable provision of the Zoning Regulations.

Further, the Association's authority to sell the spaces was affirmed by the Superior Court of the District of Columbia (Case No. 2004 CA 007452B) in a suit brought by Mr. Harnett. Mr. Harnett's disagreement with the Court's finding and his disappointment in not "winning" one of the spaces is not relevant to these proceedings. In addition, his claims regarding the safety of the new spaces are not warranted considering the fact that for many years, he himself used Newly Created Spaces #2 and #3 for his own purposes and tried to prevent anyone else from doing so.

Board of Zoning Adjustment
District of Columbia
CASE NO. 17317
EXHIBIT NO. 22

Chairman Geoffrey Griffis

October 23, 2006

Page 2

The Association's Required and Non-Required Parking Spaces

The Washington Harbour Condominium is located at 3030 K Street, N.W. in the W-3 Zone (the "Property"). In 1986, the Association received approval of a Parking Facility Plan, which included the provision of both "required" and "non-required" parking spaces designed to serve the Association's residential units. The Zoning Regulations dictate the number of parking spaces required for specific uses in certain zones (i.e. "required" parking spaces) and also clearly allow for the provision of parking spaces in an amount that exceeds that required (i.e. "non-required" parking spaces, see 11 DCMR 2101.2). By permitting "required" and "non-required" parking spaces, the Zoning Regulations allow for the provision of the maximum number of parking spaces possible in urban environments, where space is always at a premium. To fail to clearly understand and apply this distinction between "required" and "non-required" parking spaces would have the effect of severely limiting private garage parking spaces, not to mention being a clear misinterpretation of the Zoning Regulations.

Per Section 2101.1 of the Zoning Regulations (the "Schedule of Requirements"), residential uses in a W zone require one (1) parking space for every three (3) residential dwelling units. The Association consists of 35 multi-family dwelling units; therefore twelve (12) parking spaces are required for the Property per the Schedule of Requirements. The location of the "required" spaces is not dictated by the Zoning Regulations, as the Zoning Regulations only require that the requisite number of spaces exist and comply with all applicable provisions, which the "required" spaces do in this instance.

The remainder of the parking spaces are "non-required" spaces, as permitted under 11 DCMR 2101.2. The Zoning Regulations are clear as to which provisions are applicable to "required" parking spaces and which provisions are applicable to all parking spaces (see 11 DCMR 2118.9). Again, compliance with all applicable provisions of the Zoning Regulations is addressed in the Association's Pre-Hearing Statement.

Newly Created Parking Spaces

In 2004, the Association created and sold license rights to five (5) new parking spaces, with the full authority and consent of the Association ownership. The creation of these parking spaces, as with all other elements of the Association's parking garage, are required to comply with applicable provisions of the Zoning Regulations and all other municipal regulations, which they do. The Association created these spaces with careful regard for the safety of residents and visitors, and have to date received no complaints with regards to the spaces created from any owner other than Mr. Harnett. The Traffic Group can demonstrate and will testify as to the safety and efficiency of the Association's parking structure and the Newly Created parking spaces.

Chairman Geoffrey Griffis

October 23, 2006

Page 3

Mr. Harnett's Right and Ability to Use His Parking Space

The Association's actions have in no way violated any applicable provision of the Zoning Regulations, nor have they restricted Mr. Harnett's right and ability to use his parking space (P-112). As illustrated by the diagrams prepared by The Traffic Group, on behalf of the Association, Space P-112 is fully accessible and useable in a safe manner. Additionally, Mr. Harnett owns four (4) additional parking spaces in the garage and has had ample opportunity to relocate his numerous vehicles as he desires within the garage. Further, and contrary to the claims of Mr. Harnett, members of the public have in no way been impacted by the creation of new parking spaces by the Association and no other residents have registered complaints or expressed safety concerns.

The distance between Space P-112 and new parking space #2 is 19 feet, 6 inches, not 16 feet, 10 inches as claimed by Mr. Harnett. In any event, this distance is not in violation of any requirement of the Zoning Regulations since 11 DCMR 2117.6 requires 20-foot aisle width between required spaces, not all spaces—a distinction that is overlooked by Mr. Harnett (see discussion above).

ANC 2E Recommendation

As stated in the Pre-Hearing Statement, ANC 2E did not base its recommendation on a clear presentation of the facts and issues of the Appeal, and in any event the recommendation of ANC 2E should be rejected based on the correct interpretation and application of the Zoning Regulations as outlined in the Pre-Hearing Statement and herein.

At the beginning of ANC 2E's meeting on October 3, 2006, the Association's representative in attendance was specifically asked not to provide a detailed explanation of the legal issues presented in the Appeal. At the conclusion of the Association representative's brief remarks to ANC 2E, he offered to provide greater detail and answer any questions. This offer was not accepted. ANC 2E proceeded to briefly deliberate on the matter and made its recommendation based on a diagram provided by Mr. Harnett's representative in attendance, which was not shared with the Association's representative. While the ANC's recommendation is entitled to "great weight" by law, the procedural circumstances and substantive merits of the recommendation made by ANC 2E should be overcome by careful deliberation by the BZA.

The Association's Expert Witness

The Association has engaged and will present Wes Guckert from The Traffic Group as its expert witness.

Chairman Geoffrey Griffis

October 23, 2006

Page 4

Pedestrian Walkway and Safety

The Association's Parking Facility is safe for pedestrians and provides sufficient access to and from the residential elevator. The Association took great care, acting on behalf of its owners, to ensure that access and safety for owners was sufficient and appropriate when creating the new spaces in 2004. The claim by Mr. Harnett that these parking spaces should be eliminated out of deference to a pedestrian walkway is contradictory to Mr. Harnett's claim that he needs to be able to drive his car through this area in order to access his parking space. In addition, Mr. Harnett has admitted that he parked his car or cars in this area for many years and in fact tried to claim these spaces as his own at the time of the auction. Therefore, any claim of pedestrian safety is not valid.

New Spaces #1, 4 and 5—Size, Shape, Vertical Clearance

Newly created spaces #1, 4 and 5 are fully compliant with all applicable provisions of the Zoning Regulations. These spaces are rectangular and, despite not being "required" parking spaces, are compliant with the size requirements for required parking spaces. Further, contrary to the claims of Mr. Harnett, these spaces all provide the minimum vertical clearance of 6 feet, 6 inches as shown and verified by the Association. These spaces provide the required vertical clearance and, in so doing, are safely spaced from all utility piping and equipment.

Reasonable and Convenient Parking Facilities

Mr. Harnett correctly cites 11 DCMR 2116.8 as requiring that accessory parking spaces shall be located so as to furnish reasonable and convenient parking facilities for the occupants or guests of the building or structures that they are designed to serve. All parking spaces, including the newly created parking spaces and space P-112, furnish reasonable and convenient parking facilities for the residents and guests of the Property. The Association will demonstrate, both anecdotally and through its expert witness, that space P-112 is fully accessible.

Aisle Requirements

As discussed above, the distance between Space P-112 and Newly Created Parking Space #2 is 19 feet, 6 inches, not 16 feet, 10 inches as claimed by Mr. Harnett. This distance is not in violation of any requirement of the Zoning Regulations since 11 DCMR 2117.6 requires 20-foot aisle width between required spaces, not all spaces—a distinction that is overlooked by Mr. Harnett (see discussion above).

Mr. Harnett cites 11 DCMR 2115.14 for the proposition that the drive aisle between Space P-112 and Newly Created Spaces #2 and 3 is required to comply with 11 DCMR 2117.5, despite

Chairman Geoffrey Griffis
October 23, 2006
Page 5

the fact that 2117.5 only applied to "required" spaces. However, as clearly stated in 11 DCMR 2115.9, 11 DCMR 2115.10 through 2115.18 apply to commercial structures in certain zones and are inapplicable to the Property. Therefore, the Association's Pre-Hearing Statement correctly identified 2117.5 as inapplicable to the subject drive aisle and Mr. Harnett has erroneously asserted that it is applicable.

Building Permit

The Notice also cited a violation of 12 DCMR 105.1 (dealing with whether a building permit is needed for the striping of the newly created parking spaces), which is the subject of a separate appeal to the Office of Administrative Hearings (OAH), which is currently pending. The Association does not believe that 12 DCMR 105.1 requires a building permit for surface striping of non-required parking spaces, as such an activity is not one of the thirteen enumerated activities that require a building permit listed in 12 DCMR 105.1.4. However, once the BZA addresses the substantive compliance of the parking spaces with the Zoning Regulations, the Association will determine the proper course of action in this regard.

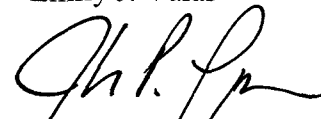
We appreciate your attention to these issues and will be present at the BZA hearing on October 24, 2006 to address these items further and answer any questions.

Sincerely,

LINOWES AND BLOCHER LLP



Emily J. Vaias



Joseph P. Lapan

cc: Vernon W. Johnson, III, Esq. (Attorney for Mr. Harnett)
Mr. Ken Joy
Mr. Robert Pence