Testimony of Barbara Kahlow
5/17/05 BZA Hearing on 2501 Penn. Ave., NW (BZA #17322/formerly #15461)

Since 1990, I, Barbara Kahlow, have served as the community's lead witness and testimony coordinator before various DC bodies[1] for development of this Gateway to Georgetown site. In 1991, after the community filed an historic district application[2], a former owner of this site illegally demolished two contributing historic townhouses that were situated on Pennsylvania Avenue between the three landmarked Mullett townhouses and the landmarked Luzon apartment building. Since then, our community has been frustrated with the unsightly appearance and absence of development of this site. Most are at the point that any development would be acceptable to replace this eyesore. However, I believe that some of the same principles for which we fought for years are still valid. The three basic principles from day one have been: scale, safety, and quality of life.

To protect the character of this special Gateway - especially its scale, the community filed various lawsuits. The result of court-ordered mediation was a Settlement Agreement[3] – signed by five individual (vs. organizational) community representatives, including me - that conveyed to each successive owner of the property and provided a maximum height of 70 feet[4]. With counsel, I actively participated in this mediation. In followup, two of us met with each successive owner – except the current owner Intrepid. Clarifying additions to the Agreement were reached with one of them.

I checked with bidders for the ownership change to Intrepid and was informed that, in fact, the prior owner's representative did disclose the existence of the Settlement Agreements. As one of the unsuccessful bidders put it, "everybody knew about it." Nonetheless, on 4/20/05, in reply to a question by a Commissioner (who is a lawyer), Intrepid erroneously told the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) that this disclosure had not been

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[1] I testified in writing or in person on this site before the following DC bodies: BZA (5/24/91, 6/9/93, 10/27/96, 6/23/97, & 7/31/97), Historic Preservation Review Board (8/15/90, 2/20/91, 4/24/91, 7/10/91, 12/18/91, 5/20/92, 12/19/96, 10/25/04, 12/14/04 & 2/22/05), Mayor's Agent (1/23/92 & 8/31/99), and a special 2-site hearing before the DC City Council (4/14/92).

[2] The proposed historic district for the eastern part of Square 14 included the 3 landmarked Mullett townhouses, the landmarked Luzon apartment building at the corner of Pennsylvania Avenue and 25th Street, the 2 illegally demolished townhouses between the Mulletts and the Luzon, and the last in-tact historic townhouse rows in the West End on 25th and M Streets.

[3] Curiously, the Office of Planning's (OP's) 5/10//05 Report only includes a passing reference to litigation (p. 3) and no mention or discussion of the Settlement Agreements.

[4] The BZA's Orders mention the required "covenants," stating "The agreement to devote 48 linear feet of retail/service uses, and to restore the Luzon in accordance with the building permit plans, will be subject to covenants to be recorded on the Land Records of the District of Columbia" (#77, p. 18, 8/13/93 Order). In addition, the subsequent "Memorandum of Understanding Regarding Development of 2501 Pennsylvania Avenue, N.W." states, "The Developer agrees that, if the Developer transfers, assigns, or conveys, in whole or in part, any of its right, title, or interest in, or related to, its agreement to purchase the Property or if the Developer transfers, assigns, or conveys, in whole or in part, any of its right, title, or interest in, or related to, development of the Property, any such transfer, assignment, or conveyance shall include a simultaneous delegation by the Developer and assumption by the transferee or assignee (collectively, the Assignee) of Developer's obligations and duties under and with respect to this Memorandum, such that Assignee shall become liable for the obligations and duties of the Developer hereunder as if the Assignee had been a party to this Memorandum" (#13, p. 5, 5/19/96).

Board of Zoning Adjustment
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made. I would like to include the Settlement Agreements in today's record (Exhibit 1). If time permits, I would like to discuss these Agreements in detail.

Only three of the five community co-signers are currently active in DC land use cases. Two of us believe that the current plan for the site can be improved. In addition, other landowners and former witnesses believe the current plan would have an adverse effect and can be improved to protect quality of life, especially in the R-5-B section along 25th Street. I would like to include 3 statements of opposition[5] into the record (Attachment A).

Since 1991, I have been a Party to the BZA's consideration of various development proposals for this site. From 1991 to 1997, I testified before the BZA in writing or in person five times. The BZA issued five Orders (#15461, 15461-B, 15461-C, 15461-D & 15461-E, dated 3/31/98, 12/4/98, 2/3/97, 3/7/94 & 8/13/93, respectively) in the predecessor case. I would like to include all five in today's record since they provide detailed Summary of Evidence of Record and Findings of Fact by the BZA (Exhibit 2).

Problems with Current Proposal

The principal problem with the current proposal is scale (height, mass, and lot occupancy), especially along 25th Street. The proposed 8 stories reaching 90 feet with 95% lot occupancy will abut the last in-tact (and low-scale) historic townhouse row in the West End. The northern part of the site and the townhouse row are zoned R-5-B, which limits the maximum height to 50 feet, maximum lot occupancy to 60%, and maximum FAR to 1.8 (vs. the proposed overall FAR of 6.0). The applicant admits that the FAR in the R-5-B portion would be 7.6 (p. 10, Preliminary Statement of Compliance with Burden of Proof). This is clearly unjustified and excessive. Also, as OP stated, "The lot occupancy requirement is aimed ... to provide light and air to buildings" (p. 9).

To protect air and light for existing residents, the zoning regulations also require 4 inches width per foot of height but not less than 10 feet for open courts and not less than 15 feet for closed courts (see 11 DCMR §406.1 at p. 4-11). The applicant's Preliminary Statement acknowledges that the court width at the northwest corner would be 17'10" vs. the required width of 28'10"[6]. In contrast, the Settlement Agreement restricted the height to 70 feet and the previous BZA Orders protected the air and light for the existing residents, consistent with 11 DCMR §§774.3 and 774.4[7].

In addition, the applicant's Preliminary Statement reveals that the plan includes 1,450 square feet "not on the lot" but in public space (p. 9). I object to this removal of public space for use by private parties.

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[5] Letters are from Settlement Agreement Co-Signer Robert Niemic, 25th Street Owner Robert Kinkead, and 25th Street Owner Ranee Lewison.

[6] Inconsistently, OP's Report states that the proposal is for an 18' court width vs. a required width of 24'3" (p. 11).

[7] For example, the BZA required "No balconies shall be constructed on the western wall of the project" (Conclusion of Law & Opinion #2, p. 29, 8/13/93 Order) and "removal of the windows along the top floor and vertically down the rear portion of the west elevation" (p. 1, 3/7/94 Order).

Attached to my testimony is a 2-page chart, which I prepared, to compare Intrepid's request for 5 variances and 2 special exceptions with the terms of the1993 Settlement Agreement and the various BZA Orders (Attachment B). The bottom line is that, besides the points I already mentioned, Intrepid does not intend to honor most of the negotiated special conditions. I have met with and exchanged some e-mails with Intrepid but its position has largely been take-it-or-leave it. This contrasts with each other previous owner of the property, who were interested in being responsive to as many of concerns as possible.

In sum, to protect the scale of this special Gateway, 90 feet is too high on 25th Street. To protect safety, it is critical that the ground floor retail bring street life to the block, i.e., with retail open at night (vs. the planned banking institution). To ensure continued quality of life, the air and light for the existing windows in the abutting building on 25th Street need to be further protected, including to project no more than matter-of-right shadows for R-5-B zoning, with a maximum height of 50 (vs. 90) feet.

Thank you for your consideration of our views.

Attachments & Exhibits

A

May 11, 2005

Board of Zoning Adjustment
441-4th Street, N.W. – Suite 210
Washington, DC 20001

Re: 2501 Pennsylvania Avenue, N.W. (BZA #17322)

Dear Board Members:

I was one of the five community co-signers of the Settlement Agreement with the prior developer of 2501 Pennsylvania Avenue, N.W. and which the Board of Zoning Adjustment (BZA) acknowledged in its prior Orders for this site (#15461, 15461-B, 15461-C, 15461-D & 15461-E, dating from 1993 to 1998). I actively participated in the consideration of all development proposals -- except the current proposal -- for this site and in the Court-ordered mediation.

I believe that the principles for which we fought for years are still valid. As a consequence, I have reviewed Barbara Kahlow's testimony for the BZA's May 17, 2005 hearing and fully support all of the points she will be making and the conclusions she has reached.

I urge the Board to appropriately revise and condition the current proposal, especially to protect the homeowners on 25th Street. Thank you for your consideration of my views.

Sincerely,

Robert J. Niemic

Robert J. Niemic
1520-16th Street, N.W. #801
Washington, DC 20036

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[redacted] N.W.
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FACSIMILE (202) 296-7688

May 10, 2005

Board of Zoning Adjustment
441-4th Street, N.W. #210
Washington, DC 20001

Re: 2501 Pennsylvania Avenue, N.W. (BZA #17322)

Dear Members of the Board:

I own Apartment #7 in the 1112-25th Street condominium. This property abuts the proposed development at 2501 Pennsylvania Ave., N.W. on the 25th Street side. I previously testified before the Board of Zoning Adjustment (BZA) about a prior proposal that would have had adverse effects on my Unit. I believe that the current proposal will also have adverse effects on my Unit.

Our condominium is in an R-5-B zone, which limits the maximum height to 50 feet, maximum lot occupancy to 60 percent, and maximum Floor Area Ratio (FAR) to 1.8. The proposed development includes an R-5-B area abutting our condominium. I believe that the proposed 90 feet height, 95 percent lot occupancy, and 7.6 FAR in this R-5-B area will have various adverse effects on my property and are not justified. In addition, I am especially concerned about maintaining the air and light in my property. In fact, the zoning limits were designed to protect existing residential properties.

The proposal includes a request for five variances and two special exceptions, including for FAR, Lot Occupancy, and Court Width. The last of these is especially important to my property. The Board's previous Orders included important protections in this area. In addition, the community's Settlement Agreement included provisions to address some other adverse effects on our building, such as trash disposal and parking for 1112, 1114 and 1116 homes. I understand that the current developer is unwilling to meet these previous commitments.

I urge the Board to consider the adverse effects and to require revisions to protect our quality of life. Thank you for your consideration of my comments.

Sincerely,

Robert H. Kinkead Jr.
Owner, 1112-25th Street, N.W. #7

May 11, 2005

Board of Zoning Adjustment
441-4th Street, N.W. #210
Washington, DC 20001

Re: 2501 Pennsylvania Avenue, N.W. (BZA #17322)

Dear Members of the Board of Zoning Adjustment:

My name is Ranee Lewison, my husband Keyvan Ahdut and I own the basement unit in 1112-25th Street condominium complex, (i.e., Unit 5). This unit abuts the proposed development at 2501 Pennsylvania Ave., N.W. on the 25th Street side. In the past, I testified that any proposed building adjacent to our Unit must not block our air and light at our window courtyard, which is the only source of air and light to the Unit on the side of our building at 1112-25th Street, N.W. As far as I understand, the Board of Zoning Adjustment previously agreed that the windows would not be blocked and, as a matter of fact, that space would be left open there in order to continue to have light and air to the apartment. The previous developer had achieved this goal with shadow studies and drawings to make it so that our courtyard would not be negatively affected. The proposed design has largely ignored the existence of the above mentioned courtyard.

According to the R-5-B zoning of this part of the site, the maximum percentage of allowable lot occupancy is 60%. This limitation requires a setback in the rear that saves our existing courtyard from being blocked. However, if the Board approves the proposed special exceptions and variances, as it stands now, we practically will end up with no courtyard, which in return means no light and no ventilation to our bedrooms and bathroom.

I am pleased that finally, after some time, there is a proposed building project. However, as I have stated previously, the matter of air and light is crucial.

I had originally planned to appear in person to testify in front of the Board, but, due to a broken ankle, I am unable to attend the hearing. I urge the Board to consider the negative impacts that we will suffer should the variances be approved. Thank you in advance for your consideration.

Sincerely,

Ranee Lewison
lewisonr@yahoo.com
1112-25th Street, N.W. Unit 5

Table I: Comparison of Previously Approved Projects & Proposed Development for 2501 Penn (split zoned R-5-B & C-2-C)

Provision	1/7/93 + 5/19/96 Agreements	8/13/93, 3/7/94 & 2/3/97 BZA Orders (end: 3 variances & 1 special exception)	Intrepid Plan **(5 variances & 2 special exceptions)**
height w/o penthouse (R-5-B 50 ft.)	70	70	90
penthouse height	8	8	8
total **FAR** (combined m-o-r 5.68; R-5-B 1.8)	silent	5.26	**6.0**
# floors	6	6	8
# parking spaces (m-o-r 0) & # floors	silent (but understood 2 fl)	49 (2 floors)	26 (2 floors)
retail sq. ft.	unclear but specs	4,163	4,000 (+ or – 100)
balconies on Penn Ave	silent	no	yes
balconies & windows on W wall	silent & silent	no & no	no & **yes**
rear yard sq. ft. (m-o-r 15')	silent	0	**0**
few windows in back & open court niche for 25th St. closed court	silent & silent	yes & yes	no & ?
lot occupancy (combined m-o-r 78.4%; R-5-B 60%)	silent	97%	**95%**
setbacks for top floors of landmarked Haller	silent (but understood)	yes	yes

Notes: m-o-r = matter-of-right, w/o = without

Table II: Conformance of Proposed Development for 2501 Penn
with Certain Other Terms in 1/93+ Agreements

Provision	Yes	?	No
loading in NW corner (1/93 #A1)			No
retail specs (1/93 #A2)			No
standpipe in alley (1/93 #A3)		?	
trash disposal for 1112-4-6 25th (1/93 #A4)			No
parking for 1112-4-6 25th (1/93 #A5)			No
limited access to retail from lobby (1/93 #A8)	yes		
sidewalk from 25th to alley West of last Mullet (1/93 #A9)			No
meeting with community at least every 6 mos. (1/93 #A10)			No
record covenant to restore Haller if damaged after building permit issued (1/93 #A11) – **Note**: 6/14/94 filed for such permit			No
no change to parking scheme on streets surrounding Square 14 (e.g., keep 2-way 25th St.) (1/93 #A12) - **Note**: this is critical	yes		
notification of any violations of Agreement w/i 2 weeks or parties can pursue legal remedies (1/93 #C2)			No
record covenant regarding permanent retail after building permit issued (5/96 #2)			No
record covenant regarding rebuild/restore 2 facades if damaged (5/96 #4 & #5)			No
begin construction w/i 5 mos. & complete w/i 2 years after construction begins (5/96 #6)			No
Agreements convey to each new owner (5/96 #13)			No