BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:

Rodut Associates of DC, LP from the Administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs (DCRA) to issue Certificate of Occupancy No. CO 100692, dated July 5, 2005, authorizing the use of an apartment building 1150 K Street, NW

BZA Appeal No. 17430

Hearing: March 21, 2006

MOTION TO DISMISS

I.
INTRODUCTION

1150 Investors, Inc., through undersigned counsel, hereby moves to dismiss Board of Zoning Adjustment ("**BZA**" or the "**Board**") Appeal No. 17430 filed by Rodut Associates of DC, LP ("Rodut") for lack of jurisdiction. The appeal is untimely and Rodut does not satisfy the requirements of a "person aggrieved" under the Zoning Enabling Act and the Zoning Regulations. Moreover, the grounds given for the appeal fail to establish any violation of the Zoning Enabling Act or the Zoning Regulations. Finally, the appeal is barred under the equitable doctrine of estoppel. Accordingly, the appeal should be dismissed.

1150 Investors, Inc. ("**1150**" or "**Owner**") is the successor in interest to the former owners of the property to which the present appeal relates and served as developer of the apartment house thereon ("**1150 K Apartments**"). The apartment house is subject to a condominium regime, with residential units sold to a number of individuals. At the time the District of Columbia issued Certificate of Occupancy No. CO 100692 on July 5, 2005 (**Exhibit A**), Owner was the record owner of the property on which the apartment house was constructed. Today, Owner is the owner of a number of condominium units within the apartment house. As a result, Owner qualifies as an automatic party to this proceeding pursuant to 11 DCMR § 3199.1 (February 2003)(the "**Zoning Regulations**"). In the event the Board does not recognize Owner

BOARD OF ZONING ADJUSTMENT
District of Columbia

Board of Zoning Adjustment
District of Columbia
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as an automatic party to the present appeal, Owner seeks leave to intervene in this appeal pursuant to section 3112.15 of the Zoning Regulations.

II.
FACTUAL BACKGROUND

On June 6, 2003, the District of Columbia Department of Consumer and Regulatory Affairs, Building and Land Regulation Administration ("**BLRA**") issued Building Permit No. B452618 to Owner's predecessor in interest, JJR Residential, LLC ("**JJR**"), for the construction of a 14-story apartment house on Lot 25 in Square 317 (**Exhibit B**).[1] The apartment house was approved to be constructed on those portions of Lot 25 owned or ground-leased by JJR (Lots 834 and 836). An above-grade connection was contemplated between the new apartment house construction and the existing improvements located on that portion of Lot 25 ground leased by Rodut (the "**Rodut Improvements**"). Consistent with the plans approved as part of the building permit for the apartment house, an above-grade connection was constructed on the interior of the east elevation of the apartment house; however, no equivalent connection was made to the Rodut Improvements. As a result of the subdivision processes detailed below, the apartment house and the Rodut Improvements are no longer located on a single record lot, thus, an above-grade connection is inappropriate and would be violative of the Zoning Regulations.

In December 2004, the public alley system in Square 317 was closed pursuant to Act 15-703 of the District of Columbia Council (SO 04-7832). As a result, a portion of the closed alley reverted to that portion of Lot 25 known as Lot 836. On January 24, 2005, Lot 25 was subdivided by 1108 K LLC and JJR, collectively, as owners in fee simple of the entirety of Lot 25. As a result, Lot 26 was established, containing 12,214 square feet of land, including all of the former Lots 834, 836, and the portion of the former alley reverting to Lot 836 (**Exhibit C**).[2] As part of this subdivision, that portion of former Lot 25 known for assessment and taxation purposes as Lot 835 was designated on the subdivision plat as "OF-25". Subsequent to the creation of Lot 26, 1108 K LLC and JJR conveyed to Owner their fee simple interests in Lot 26.

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[1] At the time of the issuance of this building permit, Lot 25 was divided for assessment and taxation purposes into Lots 834, 835, and 836; JJR owned Lot 836, while 1108 K Street Limited Liability Company ("**1108 K LLC**") owned Lots 834 and 835. 1108 K LLC ground leased Lot 834 to JJR and ground leased Lot 835 to Rodut.

[2] This record lot subdivision was undertaken in conformity with the District of Columbia Subdivision Regulations (10 DCMR Chapter 27), including §2705.2, which provides that "[t]he plat of subdivision shall be signed in ink by the owner in fee simple of the land proposed to be subdivided, and his or her signature shall be witnessed by two (2) persons and notarized."

Title to OF-25 remains with 1108 K LLC. Rodut continues to own the Rodut Improvements on OF-25.

On May 6, 2005, the District of Columbia Surveyor recorded a subdivision plat consolidating Lot 26 with other properties in Square 317, to create a new Lot 27, with total land area of 47,308 square feet (**Exhibit D**). Lot 27 was subsequently divided for assessment and taxation purposes into Lots 840, 841, and 842, with the apartment house located on assessment and taxation Lot 840 (like Lot 26, measuring 12,214 square feet). Lot 840 was then made subject to a condominium regime and assigned a series of condominium lot numbers. At the time of the completion of construction of the apartment house and the issuance of Certificate of Occupancy No. CO 100692 on July 5, 2005, the apartment house was located on Lot 27, whereas the Rodut Improvements were located on OF-25. The vast majority of the condominium units have been sold and occupied. Owner still retains ownership of those units that have not been sold.

III.
ZONING REGULATIONS DICTATE DISMISSAL OF APPEAL

The present appeal should be dismissed for lack of jurisdiction. As described below, Rodut is not an aggrieved person and its appeal is untimely. Further, even if the Board determines it has jurisdiction to hear the case, the appeal should nevertheless fail because it is without merit.

A. Rodut is Not an Aggrieved Person.

Rodut has failed to demonstrate that it is a "person aggrieved" under the Zoning Enabling Act or the Zoning Regulations. With regard to appeals to the BZA, the Zoning Enabling Act and Zoning Regulations establish a basic threshold question of whether a person is "aggrieved" by such actions as the issuance or withholding of a building permit or certificate of occupancy. *See* D.C. Official Code §6-641.07 and 11 DCMR §3112.4. While these sources do not explicitly define the criteria that should be used to determine whether a person is "aggrieved," the courts, in interpreting this requirement, have consistently held that a person may only be considered to be "aggrieved" if that person demonstrates that he or she is or will be specially *and adversely* affected by the administrative decision in question. In *Goto v. District of Columbia Board of*

Zoning Adjustment, 423 A.2d 917, 923 (D.C. 1980), the Court stated that "[g]enerally, persons wishing to contest zoning determinations must demonstrate some damage—damage greater than that suffered by the general public—to satisfy the 'person aggrieved' requirement." *See also* Rathkopf, The Law of Planning and Zoning, §43.02, at 43-7; 4 Anderson's American Law of Zoning §27.18, at 542-51 (4th ed. 1997). To be "aggrieved," a person must demonstrate (1) a specific personal and legal interest in the subject matter of the decision as distinguished from the general interest of a member of the community as a whole, and (2) that the specific personal and legal interest has been specially and injuriously affected by the decision. *See* Rathkopf §43.04 at 43-20. *Cf. President & Directors of Georgetown College v. Diavatis*, 470 A.2d 1248 (D.C.1983)(statute which allows neighboring owner to sue to enjoin zoning violation does not entitle neighbor to relief without proof that the zoning violation has caused "special damage" to neighbor).

In the present case, even if Rodut could demonstrate a specific (as opposed to general public) interest in the issuance of the apartment house certificate of occupancy ("C of O"), Rodut has failed to demonstrate that its interest has been "specially and injuriously affected" by the issuance of said C of O. In its appeal, Rodut claims only that the issuance of the C of O somehow results in a violation of section 3202.3 of the Zoning Regulations, which prohibits the location of more than one principal structure on a single record lot. Even were that claim valid, Rodut has failed to identify any detrimental impact it has suffered as a result of the issuance of the C of O in the present case. Rodut has not indicated that the use(s) undertaken at the Rodut Improvements are, or might be, somehow jeopardized as a result of the issuance of the present C of O. Nor could Rodut sustain such a claim, as the apartment house use and any use(s) undertaken at the Rodut Improvements necessarily require the issuance of separate certificates of occupancy, regardless of whether they are located in a single building or in separate buildings.

Without a demonstration of special injury, Rodut fails the threshold jurisdictional requirement of establishing itself as a "person aggrieved." As such, the present appeal should be dismissed.

B. The Appeal Was Not Timely Filed.

Section 3112.2 of the Zoning Regulations also requires that an appeal be filed "timely" with the Board. That section provides that:

> An appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, *whichever is earlier*.

11 DCMR § 3112.2(a) (Z.C. Order No. 02-01, February 7, 2003).

In the present case, Rodut filed its appeal with the BZA on September 9, 2005, more than 66 days following the issuance of the C of O on July 5, 2005. Based on that issuance date, the *latest* Rodut could have filed a timely appeal was September 6, 2005.[3] By failing to meet the September 6 date even by three days, Rodut -- through its own actions -- has divested the Board of jurisdiction to hear the case.

More telling, however, is that Rodut waited more than two months after the issuance of the C of O to file the present appeal, when Rodut knew, or reasonably should have known, several months before the final issuance of the C of O that no above-grade connection had been completed between the Rodut Improvements and the apartment house. The basis for Rodut's claim is for alleged non-compliance with section 3202.3 of the Zoning Regulations, which pertains to the issuance of *building permits*, not certificates of occupancy. Instead of challenging the construction of the apartment house consistent with the building permit, Rodut chose to wait to file its appeal well after construction was completed, long after it was apparent that no above-grade connection between the Rodut Improvements and the apartment house had been effectuated, and even while the condominium units were extensively marketed, sold, and ultimately occupied by new residents. As a result, the Board lacks jurisdiction to hear the appeal because Rodut failed to file the appeal within 60 days after the issuance of the C of O for the apartment house and well after completion of construction, when it should have known that no above-grade connection had been made.

C. Rodut Has Failed to Establish Any Violation of the Zoning Enabling Act or the Zoning Regulations.

Rodut has failed to demonstrate that the issuance of C Of O No. 100692 violates the applicable provisions of the Zoning Enabling Act or the Zoning Regulations. Instead, Rodut

[3] Because the 60th day fell on Saturday, and Monday, September 5, was the Labor Day Holiday, the deadline for any appeal based on the C of O issuance date was automatically extended to the 63rd day.

alternates between inconsistent and irreconcilable claims that: (i) the apartment house constitutes a second, separate structure from the Rodut Improvements on a single record lot (25) in violation of section 3202.3 of the Zoning Regulations; and (ii) that the Owner attempted to obtain the C of O for Lot 25, when Owner knew that lot no longer existed.

In the first instance, the 1150 K Apartments are located on Lot 27, whereas the Rodut Improvements are located on OF-25. Thus, any claim by Rodut that the apartment house constitutes a second structure on a single record lot with the Rodut Improvements fails as a matter of fact. Subsequent to obtaining the building permit and commencing construction of the apartment house, the record owners of Lot 25 subdivided Lot 25 in accordance with the Subdivision Regulations, thereby creating Lot 26.[4] In turn, Lot 26, was consolidated with other properties in Square 317 to form Lot 27. As a result, there has been no violation of section 3202.3 of the Zoning Regulations as there has been no demonstration that multiple principal structures exist on a single record lot.

In the second instance, the C of O in question was issued for occupancy of a 14-story apartment building at 1150 K Street, NW, without any reference therein to a lot or square designation. The certificate of occupancy is thus consistent with the building permit obtained in 2003, which authorized the construction of a 14-story apartment building at 1150 K Street, NW. Importantly, the C of O was not issued to Lot 25, or Lot 26, or Lot 27, but rather to the premises known as 1150 K Street, NW.

Finally, Rodut wrongly alleges that Owner somehow benefited by knowingly and falsely asserting as part of its C of O application that Lot 25 existed when, in fact, that lot no longer existed. Further, Rodut fails to demonstrate how any such assertion might benefit Owner. Instead, even presuming the reference to Lot 25 on the certificate of occupancy were not simply harmless error, it would seem that any such assertion would harm, rather than benefit, Owner, as it would beg the question of multiple principal buildings on a single record lot. Instead, the apartment house is clearly located on Lot 27, and BLRA properly issued the C of O for the apartment house at 1150 K Street as constructed in accordance with the building permit and associated plans. Thus, Rodut fails to state a valid basis upon which the Board might grant relief and the appeal cannot be sustained.

[4] Any dispute as to the validity of the subdivision processes undertaken, to the extent it does not involve issues related to zoning, is beyond the jurisdiction of the Board to consider, and appropriately addressed in another forum.

D. **The Appeal Is Barred Under the Equitable Doctrine of Estoppel.**

The applicability of the equitable doctrine of estoppel is well established in District of Columbia zoning law. *See Smith v. District of Columbia Board of Zoning Adjustment*, 342 A.2d 356 (DCCA 1975); *Lyke v. DC BZA*, 383 A.2d 7 (1978); *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, (DCCA 1980).

The elements of estoppel are that the claimant is required to prove: (i) that it acted in good faith; (ii) on affirmative acts of the District; (iii) made expensive and permanent improvements and reliance thereon; and (iv) the equities are strongly in the claimant's favor. *See also District of Columbia v. Cahill*, 60 App. DC 342 (1931). Based upon the facts of this case, including the actions of the BLRA and the inaction over an extended period of time by Rodut, the appeal should fail on the basis of estoppel.

Owner and its predecessors in interest proceeded in good faith in constructing the apartment house and selling the condominium units therein, in reliance upon the actions of the District, including BLRA's issuance of the building permit and certificate of occupancy, recordation of the subdivision plats for Lot 26 and, thereafter, Lot 27, by the Office of the Surveyor. Construction was undertaken consistent with validly-issued permits, and occupancy of the apartment house was taken consistent with the validly-issued C of O.

It is also clear that expensive and permanent improvements were made to the property in issue, including construction of a luxury 14-story apartment house, subjecting the applicable property to a condominium regime in perpetuity, extensively marketing the condominium units through various media, and ultimately conveying a majority of the units to other persons who now reside in the apartment house.

Finally, the equities strongly favor 1150 as well as the numerous individual unit owners within the apartment house. Whereas revocation of the certificate of occupancy jeopardizes the investments and very homes of more than one hundred District residents who now reside at the 1150 K Apartments, said revocation does little, if anything, to benefit Rodut. Nor is there a remedy that the Board could grant that would seem to benefit Rodut. The apartment house and the Rodut Improvements are located on separate record lots. Any above-grade connection made at this time between these buildings would be illegal and inappropriate.

At the same time, denial of the present appeal is in the best public policy interests of a large number of affected District residents living in the apartment house. To that end, Advisory Neighborhood Commission 2F, which is an elected body representing these residents, and which is automatically a party to the present appeal and whose written report is deserving of great weight by the Board, voted to oppose the present appeal at its public meeting dated March 1, 2006. (**Exhibit E**). Finally, Rodut has failed to justify: (i) why it has waited to this late date, when the certificate of occupancy has issued and the apartment house is largely occupied, to challenge the occupancy of the property; and (ii) what exactly is the nature of the harm claimed to be suffered by Rodut, if any.

IV.
WITNESSES

Owner may call the following witnesses in support of its Motion to Dismiss:

A. Ron Walton, Representative of Owner.
B. Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP

V.

CONCLUSION

WHEREFORE, based on the foregoing, the Board should dismiss the appeal for lack of jurisdiction, or in the alternative, deny the appeal.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: _____
Norman M. Glasgow, Jr.

By: _____
Dennis R. Hughes

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Washington, D.C. 20006
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Building and Land Regulation Administration
941 North Capitol Street, N.E., Room 2002
Washington, D.C. 20002
(Tel.) (202) 442-4400 (FAX) (202) 442-4450

Government of the District of Columbia
ELRA 94A

C of O

CERTIFICATE OF OCCUPANCY

PERMIT NO.
CO 100692

THIS PERMIT IS VALID ONLY FOR THE PREMISES OF THE PROJECT ADDRESS

DATE : 7/5/2005

ADDRESS:	FLOOR(S):	PRCLID : (Square) (Lot)
1150 K ST NW L	BASEMENT 2ND.THRU 14TH FL.,P1-P4	WARD : ZONE :

PERMISSION IS HEREBY GRANTED TO:	TRADING AS:
CORPORATION : 1150 INVESTORS INC. ID No.: 242807	1150 K STREET CONDOMINIUM

APPROVED USES :	PREVIOUS USES :
APARTMENT BUILDING	OTHER - SEE DESCRIPTION

TYPE :	BZA NO. :	OCCUPIED SQ. FOOTAGE:	OCCUP. LOAD:	EXPIRATION DATE:
NEW C/O		166,675	121	NONE

DESCRIPTION OF USE:
CONDOMINIUM 121 UNITS AND PARKING GARAGE

FEE [redacted] 00

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, VALID ONLY for the occupancy at the above address or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

David A. Clark
DIRECTOR

PERMIT CLERK:
THINGOC MACXOAN

EXHIBIT A

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. B452618

Date 5/26/03 Type NEW BLDG

Address of work 1150 "K" STREET N.W. Lot 25 Square 317

P Permission is hereby granted to TOTAL PERMIT FEE

LATER RESIDENTIAL, LLC FILING FEE

E Applicant for permit DATE

Location of premises NO

R TO BUILD A 16-STORY APARTMENT BUILDING AS PER PLANS. FEE PAYABLE $55,859.38

AND PROTECTION ON THIS PERMIT. INSPECTION CALL 727-1611 442-4641

M SEPARATE BLDG., PLUMB., & MECH. INSTALLATION PERMITS ARE REQUIRED.

Zone Type No. of Bldgs.

I Width of Bldg. Depth Height No. of Stories FOUR FEET (4')

Zone Proposed APARTMENT BLDG.

Height of Chimney above grade Portions

T Address of Owner 6737 COLCHESTER DR.

Deposit No. Amount

Applicant's Signature and Telephone No.

DC CHARK 3201

THIS PERMIT IS REVOCABLE AT ANY TIME AT THE DISCRETION OF THE TRANSPORTATION DEPARTMENT OR D.C. POLICE DEPARTMENT TRAFFIC DIVISION.

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:

Rodut Associates of DC, LP from the Administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs (DCRA) to issue Certificate of Occupancy No. CO 100692, dated July 5, 2005, authorizing the use of an apartment building 1150 K Street, NW	)	**BZA Appeal No. 17430** **Hearing: March 21, 2006**

MOTION TO DISMISS

I. INTRODUCTION

1150 Investors, Inc., through undersigned counsel, hereby moves to dismiss Board of Zoning Adjustment ("**BZA**" or the "**Board**") Appeal No. 17430 filed by Rodut Associates of DC, LP ("Rodut") for lack of jurisdiction. The appeal is untimely and Rodut does not satisfy the requirements of a "person aggrieved" under the Zoning Enabling Act and the Zoning Regulations. Moreover, the grounds given for the appeal fail to establish any violation of the Zoning Enabling Act or the Zoning Regulations. Finally, the appeal is barred under the equitable doctrine of estoppel. Accordingly, the appeal should be dismissed.

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[1] At the time of the issuance of this building permit, Lot 25 was divided for assessment and taxation purposes into Lots 834, 835, and 836; JJR owned Lot 836, while 1108 K Street Limited Liability Company ("**1108 K LLC**") owned Lots 834 and 835. 1108 K LLC ground leased Lot 834 to JJR and ground leased Lot 835 to Rodut.

[2] This record lot subdivision was undertaken in conformity with the District of Columbia Subdivision Regulations (10 DCMR Chapter 27), including §2705.2, which provides that "[t]he plat of subdivision shall be signed in ink by the owner in fee simple of the land proposed to be subdivided, and his or her signature shall be witnessed by two (2) persons and notarized."

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III.
ZONING REGULATIONS DICTATE DISMISSAL OF APPEAL

The present appeal should be dismissed for lack of jurisdiction. As described below, Rodut is not an aggrieved person and its appeal is untimely. Further, even if the Board determines it has jurisdiction to hear the case, the appeal should nevertheless fail because it is without merit.

A. Rodut is Not an Aggrieved Person.

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Zoning Adjustment, 423 A.2d 917, 923 (D.C. 1980), the Court stated that "[g]enerally, persons wishing to contest zoning determinations must demonstrate some damage—damage greater than that suffered by the general public—to satisfy the 'person aggrieved' requirement." *See also* Rathkopf, The Law of Planning and Zoning, §43.02, at 43-7; 4 Anderson's American Law of Zoning §27.18, at 542-51 (4th ed. 1997). To be "aggrieved," a person must demonstrate (1) a specific personal and legal interest in the subject matter of the decision as distinguished from the general interest of a member of the community as a whole, and (2) that the specific personal and legal interest has been specially and injuriously affected by the decision. *See* Rathkopf §43.04 at 43-20. *Cf. President & Directors of Georgetown College v. Diavatis*, 470 A.2d 1248 (D.C.1983)(statute which allows neighboring owner to sue to enjoin zoning violation does not entitle neighbor to relief without proof that the zoning violation has caused "special damage" to neighbor).

In the present case, even if Rodut could demonstrate a specific (as opposed to general public) interest in the issuance of the apartment house certificate of occupancy ("C of O"), Rodut has failed to demonstrate that its interest has been "specially and injuriously affected" by the issuance of said C of O. In its appeal, Rodut claims only that the issuance of the C of O somehow results in a violation of section 3202.3 of the Zoning Regulations, which prohibits the location of more than one principal structure on a single record lot. Even were that claim valid, Rodut has failed to identify any detrimental impact it has suffered as a result of the issuance of the C of O in the present case. Rodut has not indicated that the use(s) undertaken at the Rodut Improvements are, or might be, somehow jeopardized as a result of the issuance of the present C of O. Nor could Rodut sustain such a claim, as the apartment house use and any use(s) undertaken at the Rodut Improvements necessarily require the issuance of separate certificates of occupancy, regardless of whether they are located in a single building or in separate buildings.

Without a demonstration of special injury, Rodut fails the threshold jurisdictional requirement of establishing itself as a "person aggrieved." As such, the present appeal should be dismissed.

B. The Appeal Was Not Timely Filed.

Section 3112.2 of the Zoning Regulations also requires that an appeal be filed "timely" with the Board. That section provides that:

> An appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, *whichever is earlier.*

11 DCMR § 3112.2(a) (Z.C. Order No. 02-01, February 7, 2003).

In the present case, Rodut filed its appeal with the BZA on September 9, 2005, more than 66 days following the issuance of the C of O on July 5, 2005. Based on that issuance date, the *latest* Rodut could have filed a timely appeal was September 6, 2005.[3] By failing to meet the September 6 date even by three days, Rodut -- through its own actions – has divested the Board of jurisdiction to hear the case.

More telling, however, is that Rodut waited more than two months after the issuance of the C of O to file the present appeal, when Rodut knew, or reasonably should have known, several months before the final issuance of the C of O that no above-grade connection had been completed between the Rodut Improvements and the apartment house. The basis for Rodut's claim is for alleged non-compliance with section 3202.3 of the Zoning Regulations, which pertains to the issuance of *building permits*, not certificates of occupancy. Instead of challenging the construction of the apartment house consistent with the building permit, Rodut chose to wait to file its appeal well after construction was completed, long after it was apparent that no above-grade connection between the Rodut Improvements and the apartment house had been effectuated, and even while the condominium units were extensively marketed, sold, and ultimately occupied by new residents. As a result, the Board lacks jurisdiction to hear the appeal because Rodut failed to file the appeal within 60 days after the issuance of the C of O for the apartment house and well after completion of construction, when it should have known that no above-grade connection had been made.

C. Rodut Has Failed to Establish Any Violation of the Zoning Enabling Act or the Zoning Regulations.

Rodut has failed to demonstrate that the issuance of C Of O No. 100692 violates the applicable provisions of the Zoning Enabling Act or the Zoning Regulations. Instead, Rodut

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alternates between inconsistent and irreconcilable claims that: (i) the apartment house constitutes a second, separate structure from the Rodut Improvements on a single record lot (25) in violation of section 3202.3 of the Zoning Regulations; and (ii) that the Owner attempted to obtain the C of O for Lot 25, when Owner knew that lot no longer existed.

In the first instance, the 1150 K Apartments are located on Lot 27, whereas the Rodut Improvements are located on OF-25. Thus, any claim by Rodut that the apartment house constitutes a second structure on a single record lot with the Rodut Improvements fails as a matter of fact. Subsequent to obtaining the building permit and commencing construction of the apartment house, the record owners of Lot 25 subdivided Lot 25 in accordance with the Subdivision Regulations, thereby creating Lot 26.[4] In turn, Lot 26, was consolidated with other properties in Square 317 to form Lot 27. As a result, there has been no violation of section 3202.3 of the Zoning Regulations as there has been no demonstration that multiple principal structures exist on a single record lot.

In the second instance, the C of O in question was issued for occupancy of a 14-story apartment building at 1150 K Street, NW, without any reference therein to a lot or square designation. The certificate of occupancy is thus consistent with the building permit obtained in 2003, which authorized the construction of a 14-story apartment building at 1150 K Street, NW. Importantly, the C of O was not issued to Lot 25, or Lot 26, or Lot 27, but rather to the premises known as 1150 K Street, NW.

Finally, Rodut wrongly alleges that Owner somehow benefited by knowingly and falsely asserting as part of its C of O application that Lot 25 existed when, in fact, that lot no longer existed. Further, Rodut fails to demonstrate how any such assertion might benefit Owner. Instead, even presuming the reference to Lot 25 on the certificate of occupancy were not simply harmless error, it would seem that any such assertion would harm, rather than benefit, Owner, as it would beg the question of multiple principal buildings on a single record lot. Instead, the apartment house is clearly located on Lot 27, and BLRA properly issued the C of O for the apartment house at 1150 K Street as constructed in accordance with the building permit and associated plans. Thus, Rodut fails to state a valid basis upon which the Board might grant relief and the appeal cannot be sustained.

---

[4] Any dispute as to the validity of the subdivision processes undertaken, to the extent it does not involve issues related to zoning, is beyond the jurisdiction of the Board to consider, and appropriately addressed in another forum.

D. **The Appeal Is Barred Under the Equitable Doctrine of Estoppel.**

The applicability of the equitable doctrine of estoppel is well established in District of Columbia zoning law. *See Smith v. District of Columbia Board of Zoning Adjustment*, 342 A.2d 356 (DCCA 1975); *Lyke v. DC BZA*, 383 A.2d 7 (1978); *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, (DCCA 1980).

The elements of estoppel are that the claimant is required to prove: (i) that it acted in good faith; (ii) on affirmative acts of the District; (iii) made expensive and permanent improvements and reliance thereon; and (iv) the equities are strongly in the claimant's favor. *See also District of Columbia v. Cahill*, 60 App. DC 342 (1931). Based upon the facts of this case, including the actions of the BLRA and the inaction over an extended period of time by Rodut, the appeal should fail on the basis of estoppel.

Owner and its predecessors in interest proceeded in good faith in constructing the apartment house and selling the condominium units therein, in reliance upon the actions of the District, including BLRA's issuance of the building permit and certificate of occupancy, recordation of the subdivision plats for Lot 26 and, thereafter, Lot 27, by the Office of the Surveyor. Construction was undertaken consistent with validly-issued permits, and occupancy of the apartment house was taken consistent with the validly-issued C of O.

It is also clear that expensive and permanent improvements were made to the property in issue, including construction of a luxury 14-story apartment house, subjecting the applicable property to a condominium regime in perpetuity, extensively marketing the condominium units through various media, and ultimately conveying a majority of the units to other persons who now reside in the apartment house.

Finally, the equities strongly favor 1150 as well as the numerous individual unit owners within the apartment house. Whereas revocation of the certificate of occupancy jeopardizes the investments and very homes of more than one hundred District residents who now reside at the 1150 K Apartments, said revocation does little, if anything, to benefit Rodut. Nor is there a remedy that the Board could grant that would seem to benefit Rodut. The apartment house and the Rodut Improvements are located on separate record lots. Any above-grade connection made at this time between these buildings would be illegal and inappropriate.

At the same time, denial of the present appeal is in the best public policy interests of a large number of affected District residents living in the apartment house. To that end, Advisory Neighborhood Commission 2F, which is an elected body representing these residents, and which is automatically a party to the present appeal and whose written report is deserving of great weight by the Board, voted to oppose the present appeal at its public meeting dated March 1, 2006. (**Exhibit E**). Finally, Rodut has failed to justify: (i) why it has waited to this late date, when the certificate of occupancy has issued and the apartment house is largely occupied, to challenge the occupancy of the property; and (ii) what exactly is the nature of the harm claimed to be suffered by Rodut, if any.

IV.
WITNESSES

Owner may call the following witnesses in support of its Motion to Dismiss:

A. Ron Walton, Representative of Owner.
B. Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP

V.

CONCLUSION

WHEREFORE, based on the foregoing, the Board should dismiss the appeal for lack of jurisdiction, or in the alternative, deny the appeal.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: _____
Norman M. Glasgow, Jr.

By: _____
Dennis R. Hughes

2099 Pennsylvania Ave., N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street N.E. room 2100
Washington D.C. 20002
Tel. (202) 442-4470 FAX (202) 442-4862

Government of the District of Columbia BLRA 94A

C of O

CERTIFICATE OF OCCUPANCY

PERMIT NO.
CO 100692

THIS PERMIT IS VALID ONLY FOR THE PREMISES OF THE PROJECT ADDRESS

DATE : 7/5/2005

ADDRESS :	FLOOR(S):	PRCLID :
1150 K ST NW L	**BASEMENT 2ND.THRU 14TH FL.,P1-P4**	(square) (lot) WARD : ZONE :

PERMISSION IS HEREBY GRANTED TO :	TRADING AS:
CORPORATION : 1150 INVESTORS INC. ID No.: 242807	**1150 K STREET CONDOMINIUM**

APPROVED USES :	PREVIOUS USES :
APARTMENT BUILDING	**OTHER - SEE DESCRIPTION**

TYPE :	BZA NO. :	OCCUPIED SQ. FOOTAGE:	OCCUP. LOAD:	EXPIRATION DATE:
NEW C/O		**166,675**	**121**	**NONE**

DESCRIPTION OF USE:
CONDOMINIUM 121 UNITS AND PARKING GARAGE

FEE :

FEE : **$33.00**

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, VALID ONLY for the premise at the above address or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

David A. Clark
DIRECTOR

PERMIT CLERK:
THINGOC MACXOAN

EXHIBIT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Form BLRA-15
Rev. 9/30/91

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. B452618

Date 6/26/03 (Type) NEW BLDG.

Address of work 1150 "K" STREET N.W. Lot 25 Square 317

Permission is hereby granted to TOTAL PERMIT FEE $

J J R RESIDENTIAL, LLC FILING FEE $

who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit. (Owner) NO DATE

Authorized work and conditions of performance thereof FEE PAYABLE $55,859.38

FOR INSPECTIONS CALL XXX XXX 442-4641

PERMIT

TO BUILD A 14 STORY APARTMENT BUILDING AS PER PLANS.
NO PROJECTION ON THIS PERMIT.
SEPARATE ELEC., PLUMB., & MECH. INSTALLATION PERMITS ARE REQUIRED.

Builder Value $ No. of Bldgs.

Width of Bldgs. Length Height No. of Stories FOURTEEN (14)

Zone To be occupied as APARTMENT BLDG.

Height of terrace above grade Projections

Address of owner 6737 OLD M'LEAN VIL. DR.

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Permit Clerk

D. CLARK 32301

Issued by

THIS PERMIT IS REVOCABLE AT ANYTIME AT THE DISCRETION OF THE TRANSPORTATION DEPARTMENT OR D.C. POLICE DEPARTMENT, TRAFFIC, NTMO.

EXHIBIT B

SUBDIVISION
SQUARE 317

EXHIBIT C

The undersigned certify that they are owners in fee simple of the property to be subdivided and are in peaceful occupation thereof; that there are no pending suits or actions that affect title to the property, that parties to any deeds of trust have hereon indicated their assent; and that there are no interests or claims affecting title to the property other than such deeds of trust. The undersigned hereby subdivide Lot 25, Square 317 (Book 194 Page 104) and part of Public Alley closed (Book 199 Page 15) into one Lot and request that this subdivision be recorded in the Office of the Surveyor of the District of Columbia.

WITNESSES

Sandra E. Potter

OWNERS

1108 K STREET LIMITED LIABILITY COMPANY

RONALD E. WALTON, AUTHORIZED AGENT

Sandra E. Potter

JJR RESIDENTIAL, L.L.C.

RONALD E. WALTON, MANAGING MEMBER

Subscribed and sworn before me this 14th day of January 2005

Notary Public

My Commission Expires May 31, 2008

NUMBER OF TRUSTS: 0

ASSENT BY TRUSTEES:

SURVEYOR'S OFFICE, D.C.

Made for: MADDOX ENGINEERING

Drawn by: L.E.S. Checked by:

Record and computations by: F. SLEEM

Recorded at: 3:50PM JANUARY 24, 2005

Recorded in Book 199 Page 22 S.O. 15802

Scale: 1 inch = 20 feet File No. 04-14186

1/24/ 2005

I certify that the following statements relating to this subdivision are correct:

1. Ownership agrees with our records: 1/24/05
2. Real estate taxes are paid to: 3/31/05
3. There are no unpaid assessments: 1/24/05

Chief Assessor, Assessment Division

I acknowledge for the owners that this is not a tax certificate as intended by D.C. Code Section 47-405

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

1/22 2005

I certify that this subdivision complies with all applicable provisions of DCMR Zoning Regulation of the District of Columbia.

Zoning District: DD/C3C

Zoning Administrator

Jan. 18 2005

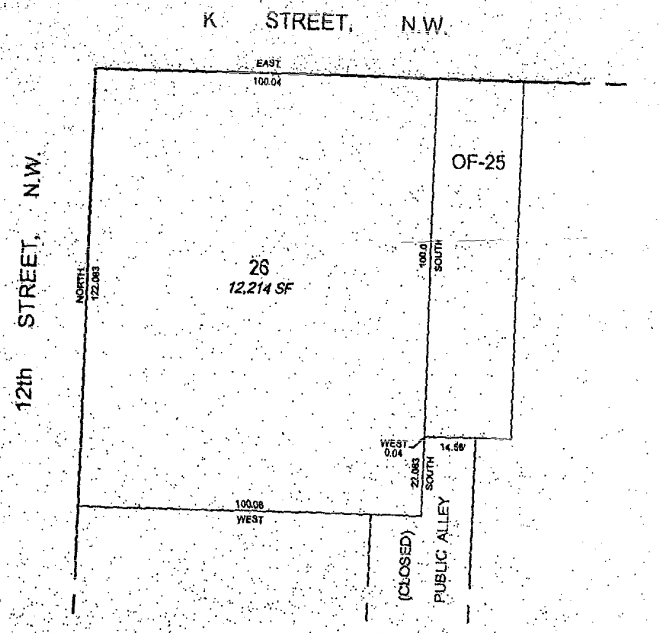
HISTORIC PRESERVATION

OFFICE OF THE SURVEYOR

January 21 2005

I certify that this plat is correct and is hereby recorded.

Surveyor, D.C.



SUBDIVISION
SQUARE 317

EXHIBIT D

deeds of trust have hereon indicated their assent; and that there are no interests or claims affecting title to the property other than such deeds of trust. The undersigned hereby subdivides original Lots 1 thru 3, Lots A, B and remainder of 4 (Book OWB Page 88); Lots 16 thru 17 and remainder of Lots 5 and 6 (Book WBM Page 228), Lots 15, 18 and remainder of Lot 14 (Book 16 Page 170), Lot 20 (Book 30 Page 86), Lot 38 (Book 199 Page 22), all in Square 317 and Public Alleys closed by Act of Corporation of Washington by Liber JAS106 Page 243 and Book 199 Page 16, into one Lot and square 317 and request that this subdivision be recorded in the Office of the Surveyor of the District of Columbia.

WITNESSES	OWNERS
	1101 NEW YORK HOLDINGS, LLC
	DAVID SHERWARD, VICE PRESIDENT
	1150 INVESTORS, INC.
	RONALD E. WALTON, PRESIDENT
	GEORGE C. STAMOULES TRUST
	GEORGE C. STAMOULIS, TRUSTEE

Subscribed and sworn before me this 14th day of February 2005

Notary Public — My Commission Expires September 30, 2008

NUMBER OF TRUSTS: 3

ASSENT BY TRUSTEES:

Richard B. Mark, Trustee

Steve E. Carillo, Trustee

Joseph N. Dale, Trustee

SURVEYOR'S OFFICE, D.C.

Made by: HOLLAND & KNIGHT

Drawn by: L.E.S. Checked by: EJ

Record and computations by: F. BLEEN

Recorded at: 2:20 P.M. MAY 6, 2005

Recorded in Book 199 Page 95 S.O. 16837

Scale: 1 inch = 30 feet File No. 05-204

5/2/ 2005

I certify that the following statements relating to this subdivision are correct.

1 Ownership agrees with our records: 5/3/05 FF

2 Real estate taxes are paid to: 9/30/05 HB

3 There are no unpaid assessments: 5/3/05 KB

Joi Mara O'Leary Dunaja
Chief Assessor, Assessment Division

I acknowledge for the owners that this is not a tax certificate as intended by D.C. Code Section 47-486.

Freda Kobar

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

5-2 2005

I certify that this subdivision complies with all applicable provisions of DCMR 11, Zoning Regulation of the District of Columbia.

Zoning District: RA/C-3-C

Zoning Administrator

4/25/ 2005

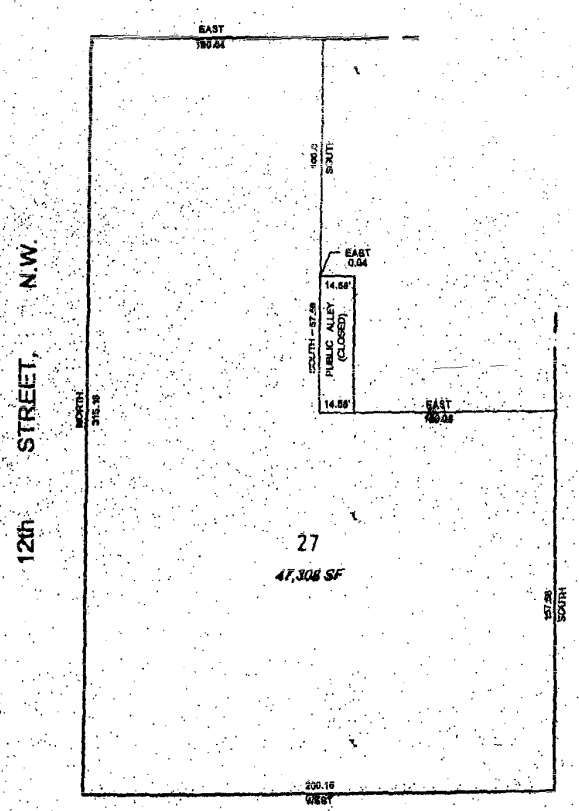
HISTORIC PRESERVATION

OFFICE OF THE SURVEYOR

May 6 2005

I certify that this plat is correct and is hereby recorded.

Surveyor, D.C.



ADVISORY NEIGHBORHOOD COMMISSION 2F
Government of the District of Columbia
5 Thomas Circle, NW, Washington, D.C. 20005
Telephone: (202) 667-0052 Fax: (202) 667-0053 www.anc2f.org

Commissioners
2F01 Charles Reed, *Chairman*
2F02 Jim Brandon, *Vice Chairman*
2F03 Christopher Dyer
2F04 Bob Ellison, *Secretary*
2F05 Sandra Biasillo, *Treasurer*
2F06 Michael Nelson
Renan Snowden, *Executive Director*

March 5, 2006

(Via Email and First Class Mail)
Geoffrey H. Griffis
Chair
Board of Zoning Adjustment
441 4th Street, NW, Suite 210
Washington, DC 20001

Re: 1150 K Street, NW, Appeal of Rodut Associates of DC, LP, Appeal No. 17430

Dear Chairman Griffis and Members of the Board:

In accordance with 11 CDCR § 3115, Advisory Neighborhood Commission 2F (hereinafter "ANC2F" or "Commission") submits its report with respect to the above matter. ANC2F advises the Board to dismiss the appeal.

As required by 11 CDCR § 3115.1, ANC2F provides the following information (paragraph numbers correspond to those in the quoted regulation):

(a) *Identification of the appeal or application:* 1150 K Street, NW, Appeal of Rodut Associates of DC, LP, Appeal No. 17430.

(b) *ANC meeting date:* March 1, 2006

(c) *Notice:* Proper notice of the meeting was provided in accordance with law and the bylaws of ANC2F. Copies of such notice are contained in the minutes of the meeting.

(d) *Quorum and attendance:* Under ANC2F bylaws, a quorum requires the attendance of at least four of the six elected and acting commissioners. All six were present. A quorum was present and acting throughout the meeting.

(e) *Issues and ANC concerns:* The Appeal as we understand it, seeks by this appeal to challenge the issuance of a certificate of occupancy for the subject property, an apartment building. At the public meeting of the Community Development Committee of ANC2F, held January 22, 2006, this matter was reviewed, with presentations by the appellee through its representatives. Appellants were not present. As represented by the Appellee, the certificate is claimed to be improperly issued because the improvements involve two buildings on a single

record lot, in contravention of the District of Columbia zoning code. Appellee's counsel represented to the CDC that the building in question is in fact on a separate building lot.

The building in question is now almost completely occupied by residents of this ANC, whose quiet and peaceful enjoyment of their apartments is being threatened by this appeal, which, if the facts are as represented to the CDC, is baseless.

The CDC recommended unanimously to ANC2F that the Board of Zoning Adjustment be advised to dismiss the appeal.

The recommendation of the CDC was approved unanimously at the aforesaid meeting of March 1, 2006.

(f) *ANC advice:* If, as appears to be the case, the apartment building at 1150 K Street is constructed on a single record lot, ANC2F advises the Board to dismiss the appeal.

(g) *ANC resolution vote:* The vote of ANC2F to adopt this recommendation was unanimous (5 to 0, with one abstention).

(h) *Authorized persons:* ANC2F authorizes its Charles D. Reed, its Chairman, to represent this report.

We request that the Board give great weight to our advice herein expressed, as provided by § 1-309.10 of the District of Columbia Code, and 11 CDCR § 3115.2 of the Board's regulations.

Sincerely yours,

Charles D. Reed
Chairman, ANC 2F

cc: (*Via Email only)*
Dennis R. Hughes, Esq. (dennis.hughes@hklaw.com)