

KINLEY R. DUMAS
(202) 736-2659

February 1, 2007

BY HAND

Geoffrey S. Griffis, Chair
District of Columbia Board of Zoning Adjustment
441 Fourth Street, N.W., Second Floor South
Washington DC 20001

Re: Appeal of Woodley Park Community Association and Advisory Neighborhood
Commission 3C, BZA Case No. 17538, Motion to Strike
Our File No.: 092218.0014

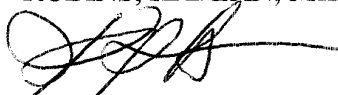
Dear Chairman Griffis and Members of the Board:

Enclosed for filing please find a Motion to Strike Appellants' February 1, 2007 filing in
the above-referenced matter.

We look forward to your decision on this matter at your February 6, 2007 meeting.

Sincerely,

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



Kinley R. Dumas

DC1 45693442.1

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17538

EXHIBIT NO. 28

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

**Appeal of Woodley Park Community Association
and Advisory Neighborhood Commission 3C**

**BZA Application No.: 17538
Decision Date: February 6, 2007**

MOTION TO STRIKE SUBMISSION OF APPELLANTS

At the conclusion of the December 12, 2006 hearing on the above-referenced matter, the Board left the record open for the limited purpose of the submission by the Appellants of a drawing marked "Wardman Park East Garage," showing the Plaza Level Plan of the proposed underground parking garage which is the subject of this appeal, and for submission by the Intervenor of the Order of the Zoning Commission in Case 03-05, approving a Planned Unit Development for the Department of Transportation at Southeast Federal Center. No new evidence was requested by the Board. Contrary to the instructions of the Board, on February 1, 2007, the Appellants submitted argument in response to Intervenor's submission of the Order of the Zoning Commission in Case 03-05 that goes beyond what was authorized by the Board. Based on the Board's limited instructions, the Intervenor hereby moves to strike Appellant's February 1, 2007 which contains argument in response to materials that were specifically requested and authorized by the Board.

The Board left the record open after the hearing for the limited purpose of receiving the information identified in the record above. The Intervenor simply submitted a copy of the Zoning Commission's Order in Case 03-05, along with an explanation of the relevant language in the Order, which had been discussed on the record before the Board of Zoning Adjustment. The Board could have taken judicial notice of the Zoning Commission's Order, but after the

Intervenor's offer to provide it to the Board, it specifically requested a copy of that information and held the record open to receive it. The Intervenor submitted a copy of the relevant Zoning Commission Order along with a reiteration of their argument in the instant case. The cover letter explained the relevance of the information and the location of that information within the Zoning Commission's Order as a courtesy to the Board.

The Appellants seek to provide additional testimony after the conclusion of the Board's public hearing in this matter. The Board has already given the Appellants great latitude in allowing additional testimony to come into the record in the form of a Statement by Deborah Jane Lindeman after all parties had concluded their cases and the Board had begun to deliberate and set the matter in for a decision, over the objection of the Intervenor.¹ Intervenor respectfully request that the Board strike from the record Mr. Hitchcock's February 1, 2007 letter responding to Intervenor's January 29, 2007 submission.

Notwithstanding the fact that the submission by the Appellants constituted argument in excess of the Board's authorization to provide materials after the conclusion of the hearing, in direct violation of the Board of Zoning Adjustment's Rules of Procedure,² the Intervenor respectfully submits that the Appellants have missed the point of the language contained in 11 D.C.M.R. § 199.1 in defining the term 'building' under the Zoning Regulations. JBG's argument, and the Zoning Commission's holding in interpreting the meaning of the definition of 'building,' states that because no portion of the new portion of the main building, which will contain the parking garage, will in and of itself rise from the ground to create a separate structure, the existence of an above-ground communication is not necessary to render this project

¹ See Transcript, December 12, 2007 BZA Hearing in Case No. 17538, at pages 407-419.

² See 11 DCMR 3121.5

‘one building;’ that is, the Zoning Commission’s Order and the definition of building only require a meaningful connection above ground for two separate structures that extend above the grade to be considered as one building for zoning purposes. The provision regarding the above-ground communication simply does not apply to portions of a structure that are *entirely* below-grade.

Moreover, from a policy perspective, this provision makes complete sense because throughout the Zoning Regulations, it is clear that the overwhelming aim and concern is the regulation of structures that are above grade. The regulations protect against buildings that are too tall, too wide, too close to other structures, by requiring maximum building heights, floor area ratios, and minimum setbacks for the protection of open space. The Zoning Regulations regulate few, if any, aspects of structures that are below-grade. For example, the definition of ‘gross floor area’ specifically excludes from calculation the floor area in any cellar, and no minimum setback from property lines is required for portions of structures that are underground.

Indeed, the Appellants are correct in saying “JBG seems to argue that the garage is not a ‘building’ under the Zoning Regulations because it is largely underground.” That is precisely JBG’s argument, because the garage is not simply “largely underground,” it is *entirely* underground and is merely an extension or an addition to the main hotel building. It is not a separate building, nor is it a separate structure that JBG hopes will be deemed ‘one building’ under the definition provisions of ‘building’ in 11 D.C.M.R. 199.1.

For the foregoing reasons, the Applicant respectfully requests that the Board strike the letter from Appellants’ counsel dated February 1, 2007, as inappropriate and unauthorized argument that exceeds the direction of the Chairman on the record at the hearing on December

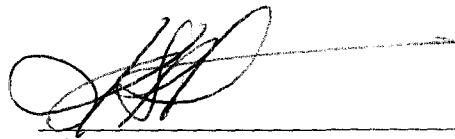
12, 2007, or, in the alternative, that the Board consider the Intervenor's argument in response contained herein and accept same into the record on this matter.

Respectfully submitted,

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

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Richard B. Nettler

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Kinley R. Dumas

1875 Eye Street, N.W.
Suite 300
Washington, D.C. 20006
(202) 775-0725

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2007, a true and accurate copy of the foregoing Motion to Strike was served by hand on:

Nancy MacWood
Chairperson
ANC 3C
2727 Devonshire Place, NW
Washington, D.C. 20008

John Goodman
President
Woodley Park Community Association
2810 29th Street, NW
Washington, D.C. 20008

Cornish Hitchcock, Esq.
5301 Wisconsin Avenue, N.W.
Suite 350
Washington, D.C. 20015

Bill Crews
Zoning Administrator for the District of Columbia
941 North Capitol Street, Second Floor
Washington, D.C. 20002

Kinley R. Dumas

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Word 45670018.1

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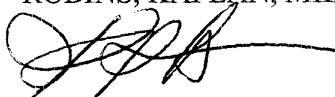
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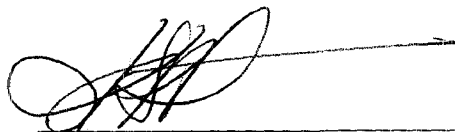
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