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# ARNOLD & PORTER

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555 Twelfth Street, NW  
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October 30, 2001

**Via Facsimile**

Zoning Commission For The District of Columbia  
Government Of The District Of Columbia  
Office of Zoning  
441 4<sup>th</sup> Street, N.W.  
Suite 210  
Washington D.C. 20001

Re: Case No. 01-07C (consolidated PUD and Air Rights at 1700-1730 K  
Street, N.W.)

Members of the Board:

Attached please find a summary of the testimony presented by my client, David  
Brooks, at the October 11<sup>th</sup> hearing on the above-referenced matter. Thank you for your  
consideration of our position.

Sincerely,

  
Cynthia A. Giordano *CB*

Attachment

cc: David M. Brooks, Esq.  
Wayne S. Quin, Esq.

01-07C  
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**Edwards Day**  
**3520 Piedmont Road, N.E.**  
**Atlanta, Georgia 30305-1516**

VIA US MAIL

October 17, 2001

Zoning Commission For The District of Columbia  
Government Of The District Of Columbia  
Office of Zoning  
441 4<sup>th</sup> Street, N.W.  
Suite 210  
Washington D.C. 20001

RE: Case No. 01-07C (consolidated PUD and Air Rights at 1700-1730 K Street, N.W.)

Members of the Board:

At the request of the Madam Chairperson, we respectfully submit a summary of our Testimony, as it relates to the above referenced matter.

As representative for the Property Owner of 910 17<sup>th</sup> Street, we **do not object to the redevelopment** of 1700-1730 K Street, N.W. We feel the development will be an asset to the neighborhood, but the development can accomplish the "Public Benefit" and "Project Amenities" required under the PUD Ordinance without exceeding the PUD "Matter of Right" FAR of 11.0 outlined in said Ordinance. The Applicant's request of an FAR of 11.07, results in a direct burden to the adjacent property owner – Barr Building. Of the 0.07 FAR increase requested, 0.06 FAR comes as of a direct encroachment into an existing light-well **We object to the encroachment into Public Air Space.**

Furthermore, we object to the decorative façade along 17<sup>th</sup> Street. The inclusion of an additional decorative story and half façade will serve to dwarf the Barr Building. The Barr Building, constructed in 1926, remains a significant architectural asset to the Neighborhood. **NEWER DOES NOT NECESSARILY MEAN BETTER.** The inclusion of this decorative façade only serves to enhance the Applicant - at a direct burden to a contiguous neighbor. This façade has no structural benefit, nor Public Benefit. The visual image created by inclusion of the decorative façade will impair and mute the architectural features of the Barr Building. The Applicant can accomplish a "First Class" Office building without this decorative façade. If the Board sees fit to approve the façade, require the Applicant to Off-Set the façade from street level as is currently done on both the current 1700 K building and 900 17<sup>th</sup> Street. Requiring this Off-Set will enable the Barr Building to retain its architectural position along the 17<sup>th</sup> Street corridor and will not burden the Applicant.

Within the District, it is our understanding there have only been three (3) cases requesting the use of public air space under the Public Space Utilization Act. Of these three (3) cases, only one has been implemented to date. It is further our understanding, all three requests were for Pedestrian Access. All three request would seem to have a direct impact and benefit to the Public!

The current reason by the Applicant to utilize public air space is as stated by the Applicant's Architect - "To Improve the Leasable Condition" for the Applicant. Is the Board establishing New Public Policy

and Precedent? Can current and future developers within the District look to this case as a way to maximize development under current and future Zoning Regulations? Can the District say this is an extraordinary development and an isolated Case, when the Applicant's Architect has stated they have compressed the Building Core and requested the utilization of public air space to meet the demands of prospective Tenants. There is no doubt this is a First Class Office Building; although, it would be our contention that any developer who wants to meet the demands of the market would build a First Class Office Building with similar architecture, features and design.

As requested by the Applicant, the addition of 2,244 square feet of "net rentable" area within public air space, we believe, will serve to create direct additional market value to the Applicant in the neighborhood of \$1,000,000. We fail to see how the request to utilize public air space and exceed the PUD FAR guidelines generates any "Public Benefit" or provides any "Public Amenity" as defined under current Zoning Regulations. It appears the only benefit is to the Applicant to the tune of One Million Dollars.

Pursuant to a Memorandum from the Applicant to the Office of Planning – dated September 28, 2001 – page 16: "the Zoning Commission linked the potential for increase over the guideline heights and densities with the necessity for such increase in light of the public benefit which would accrue: ... To exceed the guidelines ..., the regulations require that "the applicant shall have the burden of demonstrating and justifying the public benefits and other meritorious aspects of the proposal which will result "if the additional height or floor area is approved. It is the intention of the Zoning Commission to strictly apply the guidelines, and to exceed them only in exceptional circumstances where an applicant can demonstrate that the level requested is entirely appropriate and necessary for the project and will have a positive effect." (underlining, bolding and italics added)

Exceeding the PUD FAR guideline is not necessary in this case. To reiterate, the Applicant's Architect has stated the only reason for exceeding the PUD Matter of Right FAR is: "to improve Leasable Conditions". The Applicant's request is based upon a desire to maximize density – there are no exceptional circumstances in this case and maximizing density will have a detrimental effect on neighboring properties. It only benefits the Applicant and burdens contiguous neighborhoods.

The Applicant's attorney has implied to the Zoning Board during the October 11, 2001 hearing that the perpetual easement for light and air over and across Lot 30 in Square 126, as granted by deed dated December 22, 1953 and recorded in Liber 10891 at folio 451 among the Land Records of the District of Columbia; is somehow not in compliance with current building codes. Although it may not be in compliance with current building codes, it is "grandfathered" under current law. Furthermore, pursuant to page A-3 of the Applicant's Exhibit A: Proposal for a Consolidated Planned Unit Development, is the Applicant planning on utilizing an area which the Applicant implies is not in compliance with current Building Codes?

The Applicant requested we determine the distance between the Applicant's current property line and the Barr Building property line. A review of the Survey dated 12/19/00, provided by District of Columbia Government – Office of Survey, reveals the distance between the Applicant's property line and the Barr Building property line is 32 feet. The Applicant has requested the right to encroach into this area by 5.65 feet. This encroachment will result in a reduction of Air Rights by approximately 18%. The Applicant's Attorney stated before the Zoning Board that the utilization of public air space was a "minor portion" of the project. Reducing public air rights approximately 18%, at a direct profit to the Applicant and direct burden to contiguous neighbors is not minor. If the encroachment requested by the Applicant into public air space is "minor" to the project, why should the Zoning Board consider this exceptional or necessary?

The Barr Building represents a unique architectural mid-block building. The most precious commodity a mid-block building has is its window lines and light. As evidenced by the 1953 perpetual air and light easement, both the Applicant and Barr Building owner realized the significance of these facts and both demonstrated their understanding through the deeding of this easement. As a matter of clarification, it is

our understanding the current Applicant or its family was the Owner of 1700 K at the time this **perpetual** easement was granted.

In addition to reducing the public air and light area, encroaching 5.65 feet closer to the Barr Building will have a detrimental effect on the window lines of the Barr Building. Anytime you move a twelve (12) story building 5.65 feet closer, the “Walls” appear to move significantly closer. If allowed to proceed, this encroachment will **not** have a positive impact on both leasing and market value at the Barr Building.

In summary, it is our contention that the Applicant has not demonstrated the exceptional public benefit and meritorious aspects of the proposal, which are required by the Zoning Regulations to justify the granting of additional height or a floor area in excess of the PUD. Furthermore, the utilization of public air space, which does not provide a public benefit, would appear to set an ill-conceived precedent for the future. Does the Zoning Board want to establish new public policy? Finally, the utilization of public air space for the express purpose of “improving Leasable Conditions” creates a significant burden on the contiguous property – Barr Building. If the portion of the Applicant’s proposal, which utilizes public air space is “minor”, the Applicant should not be allowed to negatively impact contiguous owners - no matter how small the Applicant or this Board feels the impact may be.

Thank you for the opportunity to address these issues.

Best regards,

David M. Brooks  
Chief Investment Officer  
(404) 364-9529