
ARNOLD & PORTER

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December 5, 2001

Zoning Commission for the District of Columbia
Office of Zoning
441 4th Street, N.W.
Suite 210
Washington D.C. 20001

RE: 1700 K Street PUD; Case No. 01-07C

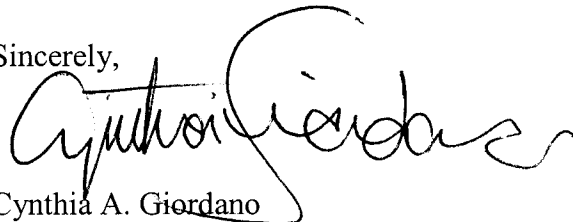
Members of the Zoning Commission:

This is to request that the Commission accept the attached submission in Case No. 01-07C late. It was not delivered in time on December 4th to be file-stamped by the Office of Zoning. Delivery was attempted about 4:30 p.m. but refused because it was not delivered to the mail room by 4 p.m. It was also faxed to the Office of Zoning at 3:50 p.m. (see attached faxed copy).

The party in this case, KV Sun Holding, is located in Atlanta, Georgia. By the time this office received the applicant's November 27th submission by mail on November 30th and sent it to David Brooks in Atlanta, Mr. Brooks had only one day from receipt on December 3rd to review the submission and prepare a response. Mr. Brooks emailed this response to me on December 4th at 2:43 p.m. (see attached email). Unfortunately, this did not allow sufficient time for us to review the letter, print it out and have it hand-delivered to the Office of Zoning for Mr. Brooks.

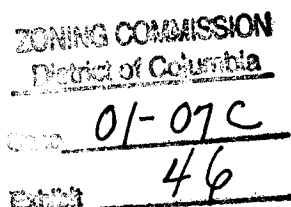
Thank you for your consideration.

Sincerely,



Cynthia A. Giordano

Enclosures



Washington, DC

New York

Los Angeles

Century City

Denver

London

Northern Virginia

681291v1

ZONING COMMISSION
District of Columbia
CASE NO. 01-07
EXHIBIT NO. 46

 *** TX REPORT ***

TRANSMISSION OK

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ARNOLD & PORTER

202.942.5000
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555 Twelfth Street, NW
 Washington, DC 20004-1206

Fax Transmittal

December 4, 2001

| RECIPIENT NAME(S) | RECIPIENT FAX NUMBER(S) | RECIPIENT TELEPHONE NUMBER(S) | RECIPIENT ROOM #(S) |
|--|---------------------------|--|---------------------|
| Alberto Bastida | 202 727-6072 | 202 727-0330 | |
| SENDER | SENDER'S TELEPHONE NUMBER | SENDER'S ROOM NUMBER | |
| Cynthia Giordano | 202 942-5840 | 1012 | |
| CLIENT/MATTER NUMBER | TIMEKEEPER NUMBER | NUMBER OF PAGE(S) | |
| 16782.002 | 4943 | We are transmitting 4 page(s) (including this cover sheet) | |
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MESSAGE

Please see attached letter from David Brooks regarding 1700 K Street PUD. The original is being hand-

ARNOLD & PORTER

202.942.5000
202.942.5999 Fax

555 Twelfth Street, NW
Washington, DC 20004-1206

Fax Transmittal

December 4, 2001

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| MESSAGE | | | |

Please see attached letter from David Brooks regarding 1700 K Street PUD. The original is being hand-delivered today.

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Information intended only for the use of the addressee named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, please note that any dissemination, distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and return the original message to us at the above address via the U.S. Mail.

Edwardsday, Inc.
3520 Piedmont Road, N.E.
Atlanta, Georgia 30305-1516

December 3, 2001

Via Facsimile and Messenger

Zoning Commission For The District of Columbia
Government Of The District Of Columbia
Office of Zoning
441 4th 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:

As representative for the Property Owner of 910 17th Street (Barr Building), we appreciate the opportunity to respond to the Applicants submittal of November 27, 2001.

Further, we appreciate the Board's careful and through consideration of this PUD application. We recognize the challenging task which this Board undertakes as it attempts to balance the impact of development on the Community - against the desire to have "First Class" development in Washington, D.C.

As we have consistently communicated from the beginning, we feel the development will be an asset to the neighborhood, but the development can accomplish the "Public Benefit" and "Project Amenities" requirements set forth in the PUD Regulations without exceeding FAR Guidelines contained therein. The Applicant's request for an increase above those guidelines comes at a direct burden to the contiguous neighbor. Of the 0.08 FAR increase requested, 0.06 FAR comes as of a direct encroachment into an existing light-well We continue to object to this Encroachment into Public Air Space.

We believe if you read the minutes of the November 9, 2001 hearing, you will notice two interesting substantive changes in the Applicants testimony, as it compares to the November 27, 2001 submittal:

- 1.) The Applicant's legal counsel originally indicated that the encroachment into public air space was a "minor" portion of this project. It appears this encroachment has now taken on new meaning. Utilization of words like essential, successful functioning and critical, etc., make it now appear "Mission Critical". Why the change in opinion? Has the design changed from

the original design presented to the Board or is this argument now more persuasive?

- 2.) The Applicant's architect originally indicated the encroachment into public air space was for the "sole" purpose of improving the leaseable condition of the project. Pursuant to the current submittal, it now appears it is necessary to allow the Applicant to offset the "significant" setback along K Street. Are the conditions of the setback along K Street now different?

Given the conflicting testimony, it is very difficult to judge the parameters of the Applicant's request.

Further, as they relate to impact upon the Barr Building, the Applicant makes only conclusory statements without substantive back-up including the following:

- 1.) "5.5 foot projection of the PUD has **no impact** on its direct sunlight";
- 2.) "Consequently, the modest use of public airspace **will not** impinge upon the Barr Building in **any** way";
- 3.) "projection will have **zero** net impact on the Barr Building"; and finally,
- 4.) "The setback area and projection into public space are achieved at **no cost** to the Barr Building **whatsoever**".

A review of Applicant's Posthearing Submission, pages A-13.1 – A-13.3 (Sun Angle Diagrams), demonstrates the Barr Building is directly burdened by the Encroachment into Public Air Space. During critical light seasons, overlaying pages A-13.2 and A-13.3 (With and Without) demonstrates the impact to floors 5,6 and 9. The Applicant's bold statements above, do not seem to be supported by their own Sun Diagrams. We have a difficult time understanding how a "modest" gain in primary reflected sunlight outweighs the impact to three floors of the Barr Building!

During your November 19, 2001 work session, Mr. Peter May noted the Applicant's request may affect the neighbor's light and noted there is no real basis for the extra five feet. He further indicated he was not asking the Applicant to redesign the core, but the Applicant must respond to the Barr's submission and show a "balanced" resolution. **As of this date, we have not been contacted directly or indirectly!**

It would appear given the newfound significance of the encroachment into public air space, as stated herein, and the admonishment of a member of the Board, the Applicant would have approached the ownership of the Barr Building to seek a balanced resolutions.

The Applicant's characterization of the impact to the Barr Building, bold unsubstantiated statements and continued lack of regard for the impact its development will have on the Barr Building appears to "fly-in the-face" of the "spirit" and "letter" of PUD guidelines.

Finally, the Applicant correctly states the Barr Building will not lose any gross floor area by this encroachment. What the Applicant fails to address is the impact the reduction in light has on a mid-block building. As previously stated, a mid-block building heavily depends on light in the rear of its floors to remain competitive in the marketplace. Any reduction in light can have a significant impact on lease-up time and rental rate. Given the Barr Building is only eleven (11) stories tall and its floor plates are approximately 8,500 square feet, any impact is severely felt by Ownership.

There is no doubt the project will have a positive effect, but exceeding the PUD Guideline FAR is not necessary. It only benefits the Applicant and burdens contiguous neighborhoods.

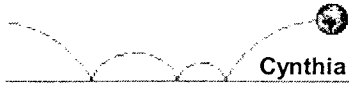
In summary:

- 1.) It is our contention the Applicant continues to burden the Barr Building and has not demonstrated any desire to seek a balanced resolution.
- 2.) Has not demonstrated the public benefit and meritorious aspects of the proposal, which result in granting additional height or floor area over and above the PUD guidelines.
- 3.) The utilization of public air space, which does not provide a public benefit, would appear to set a dangerous precedent for future development.
- 4.) The Applicant does not own or have to lease the Barr Building. It costs the applicant nothing to disregard the impacts on the Barr Building. Let the facts stand for themselves!

Again, we appreciate your thoughtful diligence and we stand ready to address any questions the Board may have and welcome the opportunity to further discuss our position.

Best regards,

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



Cynthia Giordano

12/04/2001 03:10 PM

Location: DC - 1012
Phone: 202-942-5840

To: Patricia Peterson/Sec/DC/ArnoldAndPorter@APORTER
cc:

Subject: 1700 K Application

Pls get this letter ready for submission to the ZC

----- Forwarded by Cynthia Giordano/Atty/DC/ArnoldAndPorter on 12/04/2001 03:09 PM --

dbrooks@edwardsday.com on 12/04/2001 02:43:25 PM



To: Cynthia Giordano/Atty/DC/ArnoldAndPorter@APORTER
cc:

Subject: 1700 K Application

Cynthia:

Please find herein a Draft of our response.

Please make any necessary or strategic changes and then give me a call

Best Regards,

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

<<Office of Zoning - Summary Statement 1.doc>>



- Office of Zoning - Summary Statement 1.doc