Law Offices
HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

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April 11, 2002

STEVEN E. SHER
DIRECTOR OF ZONING
AND LAND USE SERVICES
202-663-7278
Internet Address:
ssher@hklaw.com

VIA HAND DELIVERY

D.C. Zoning Commission
Room 210
441 4th Street, N.W.
Washington, D.C. 20001

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2002 APR 11 PM 3:43

Re: Zoning Commission Case No. 02-01
Text Amendments regarding the Timeliness of Filing Appeals with the Board of Zoning Adjustment

Dear Members of the Commission:

This letter responds to the notice of public hearing in the above-referenced matter, wherein the Zoning Commission has proposed to amend the provisions of Chapter 31 of the Zoning Regulations to establish timeframes within which appeals may be filed with the Board of Zoning Adjustment. We offer the following comments:

1. Since the filing of an appeal is discretionary with an appellant, we suggest that the language of proposed ¶3112.2(a) reflect the language used in §3112.2 to read "An appeal **may** ~~shall~~ be filed **no later than** ~~within~~ sixty (60) days ..."

2. The thrust of ¶3112.2(b) seems to be a limiting factor to the time otherwise established by ¶(a). This would be particularly true for additions to dwellings which could be constructed and under roof well before sixty days. However, as written, if applied to a multi-story project, which might not be under roof for many months after construction begins, it could be read to allow an appeal to be filed a long time after rights have otherwise vested and notice of construction would be evident. We suggest that ¶(b) be amended to read as follows:

"If the decision complained of involves the erection, construction, reconstruction, conversion or alteration of a structure or part thereof, no appeal **may** ~~shall~~ be filed later than ten (10) days after the date on which the structure

ZONING COMMISSION
District of Columbia
Case 02-01
Exhibit 5

ZONING COMMISSION
District of Columbia
CASE NO.02-01
EXHIBIT NO.5

or part thereof in question is under roof **or the sixty day period specified in §3112.2(a), whichever comes first** ..."

3. We note that, notwithstanding the proposed amendments, depending upon the circumstances, an appeal may be untimely in a shorter period than sixty days, particularly if the appellant had actual knowledge of proposed construction or use before a formal ruling was made. Principles such as laches and estoppel may also operate to bar the consideration of an appeal by the BZA if an appellant has slept in its rights or is otherwise equitably barred from bringing an appeal, even if that appeal is filed within the time limits proposed. We suggest that an additional ¶(d) be added, to read as follows:

"**The Board may find that an appeal filed in a lesser period of time is unreasonable and therefore untimely, depending upon the specific circumstances. An appeal which is filed within the time limits established by this section is subject to dismissal on equitable grounds, such as laches or estoppel.** "

Thank you for your consideration of our views on this matter.

Sincerely,

Whayne S. Quin

Norman M. Glasgow, Jr.

Steven E. Sher
Director of Zoning and Land Use Services