District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Washington, D.C. 20001

GARLAND F. PINKSTON
CLERK OF COURT

Telephone: 879-2700
Area Code 202

December 23, 2003

NO. 03-AA-1484 Tiber Island Cooperative Homes, Inc. vs. DC Zoning Commission

District of Columbia Zoning Commission
Jerrily Kress, Director
441 4th Street, N.W.
Suite 210S
Washington, D.C. 20001

Dear Sir/Madam:

Pursuant to the rules of this Court I am transmitting, herewith, a copy of the petition for review filed on December 23, 2003, in the above-entitled case.

Yours very truly,

Garland F. Pinkston
Clerk of Court

By: Ruth Gantt
Information Center Supervisor

cc: Edward Schwab, Esq.

#124

ZONING COMMISSION
District of Columbia
CASE NO.02-38
EXHIBIT NO.124

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

TIBER ISLAND COOPERATIVE HOMES, INC.
429 N Street, S.W.
Washington, DC 20024

and

ROY POTTS
429 N Street, S.W., Apt. 708
Washington, DC 20024

Petitioners,

v.

DISTRICT OF COLUMBIA ZONING COMMISSION
441 Fourth Street, N.W.
Washington, DC 20001,

Respondent.

RECEIVED
DEC 19 2003
DISTRICT OF COLUMBIA
COURT OF APPEALS

Case No. 02-38

Appeal No. 03-AA-1484

FILED
DEC 19 2003
DISTRICT OF COLUMBIA
COURT OF APPEALS

PETITION FOR REVIEW

Tiber Island Cooperative Homes, Inc., and Roy Potts respectfully appeal to the District of Columbia Court of Appeals from Order No. 02-38 of the District of Columbia Zoning Commission dated November 28, 2003, and in support states as follows:

1. Petitioner Tiber Island Cooperative Homes, Inc., is a corporation incorporated in the State of Delaware, and is a residential housing cooperative with offices at 429 N Street, S.W. in the District of Columbia. Petitioner Roy Potts resides at 429 N Street, S.W., Apartment 708 in the District of Columbia.

2. Respondent District of Columbia Zoning Commission issued The Zoning the Order appealed from, Order No. 02-38 of the District of Columbia Zoning Commission, on November 28, 2003. A copy of the Order is attached hereto.

3. The Zoning Commission Order appealed from approved the first stage of a two-stage planned unit development ("PUD") and a related zoning map amendment for the subject property consisting of approximately 13.42 acres at 401 M Street, S.W., comprising Lot 60 in Square 499 and Lot 88 in Square 542 and bound generally by M, I, 3rd, and 6th Streets, S.W. The

subject property is directly across M Street, S.W. from petitioner Roy Potts residence and the Tiber Island Cooperative Homes, Inc., property.

4. Public hearings in Case No. 02-38 were held by the Zoning Commission on February 13, 2003 and March 31, 2003. Petitioners appeared prepared to provide testimony as parties at the February 13, 2003 hearing, but party status was denied by the Zoning Commission.. Petitioners again appeared prepared to testify as a party at the March 31, 2003 hearing, and moved for reconsideration of the denial of party status, but reconsideration of the denial of party status was also denied.

5. Petitioner Tiber Island Cooperative Homes, Inc., is a residential cooperative containing 389 residential apartment units in four (4) high-rise apartment buildings and a number of smaller town-house-type dwellings across M Street, S.W., within 200 feet of the PUD project approved by the Zoning Commission in Order No. 02-38. Petitioner Roy Potts is a cooperative owner at 429 M Street, S.W., and is likewise affected. The light, air and view of many of the Tiber Island residents will be adversely affected by the PUD as approved. Additionally, the proposed 17 year construction project will affect petitioners and Tiber Island residents and the value of their residences negatively.

6. Respondent Zoning Commission's action in denying petitioners the status of parties with the concomitant right to testify as parties, cross-examine witnesses, etc., was arbitrary and capricious and an abuse of discretion.

7. Respondent Zoning Commission did not properly address the issues raised by the Advisory Neighborhood Commission 6-D ("ANC-6D). These issues raised by ANC-6D, and supported by petitioners, concerned the excessive height and density of the two (2) proposed office buildings along M Street, S.W., the insufficient setback from M Street, S.W., and the insufficiency of the amenities proposed by the Applicants. If granted status as parties, petitioners would have

introduced testimony and evidence further supporting the objections of ANC-6D.

8. Respondent Zoning Commission's action in not giving "great weight" to the relief which ANC-6D requested was erroneous as a matter of law and was arbitrary and capricious and an abuse of discretion.

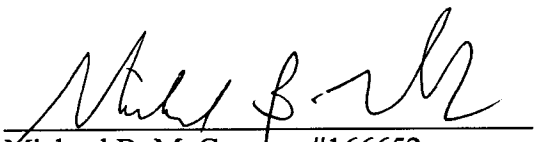
9. If petitioners are not granted party status, there will be no parties with standing to Participate in Phase 1 or Phase 2 of the PUD project. ANC-6D will not be permitted to appeal the subject Order.

10. The other parties are Applicants Kaempfer Company, Inc., Forest City Enterprises, Inc., and Breisler & Reiner, Inc., all represented by counsel as follows:

Cynthia Giordano, Esquire
Arnold & Porter
555 Twelfth Street, N.W.
Washington, DC 20004

WHEREFORE, petitioners Tiber Island Cooperative Homes, Inc., and Roy Potts respectfully request the Court reverse Order No. 02-38 and remand to the District of Columbia Zoning Commission with instructions to grant Tiber Island Cooperative Homes, Inc., and Roy Potts full status as parties to participate fully in a new public hearing to be held, and grant such other and further relief as may to the Court seem just and proper.

Respectfully submitted,



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Attorney for Petitioners