

LAW OFFICES  
**HANSON & MOLLOY**  
1320 NINETEENTH STREET, N. W.  
SUITE 300

WASHINGTON, DC 20036-1636

TELEPHONE (202) 833-9300

FAX (202) 833-9700

WWW.HANSON-MOLLOY.COM

J. DENNIS MOLLOY \*  
ARTHUR D. McKEY  
MICHAEL B. McGOVERN ◊

OF COUNSEL  
RON L. DURST\*\*

SPECIAL LEGAL CONSULTANT  
BALA NADARAJAH ▲

\* ALSO ADMITTED IN VIRGINIA  
◊ ALSO ADMITTED IN MARYLAND  
+ ALSO ADMITTED IN WEST VIRGINIA  
◊ ADMITTED TO PRACTICE IN BERMUDA  
AND IN SRI LANKA

ARTHUR B. HANSON  
(1916-1989)

JOHN L. MOLLOY, SR.  
(1913-1999)

NEW YORK  
COUNSEL

JOHN L. MOLLOY, JR.  
346 MAPLE AVENUE  
WESTBURY, NY 11590  
(516) 334-1000

July 6, 2007

**BY HAND**

District of Columbia Zoning Commission  
441 4<sup>th</sup> Street, N.W., Suite 210  
Washington, DC 20001

Re: **“Waterfront” PUD, First Stage PUD Modification and Partial  
Second Stage PUD Application, Z.C. Case No. 02-38A**

Dear Members of the Commission:

Tiber Island Cooperative Homes, Inc. (hereinafter the “Tiber Island”), by counsel, hereby respectfully submits this response to the Applicant’s counsel’s response letter of June 27, 2007 concerning the objection to the lack of opportunity to cross-examine the Applicant’s rebuttal witness, architect, Shalom Baranes, at the resumed public hearing in this case held on June 14, 2007. Neither Tiber Island nor the other parties, ANC-6D and Carrollsburg Square Condominium Association, were afforded the opportunity to cross-examine the rebuttal witnesses.

In view of the fact that this matter will be on the calendar for the meeting of the Zoning Commission set for Monday evening, July 9, 2007, and the points set forth in its letter of June 22, 2007, Tiber Island will just respond briefly to the two main points – waiver and lack of prejudice -- argued by Wayne S. Quin, Esquire, in the Applicant’s response letter:

First, there was no waiver by Tiber Island or the other parties. For there to be a waiver, the Chair would have had to offer the parties the chance to question the rebuttal witness and the parties would have had to expressly and unconditionally decline. But there was no offer of cross-examination by the Chair so there was no waiver. Further, the transcript confirms the rush to adjourn after Mr. Quin finished his concluding statement. Less than three minutes transpired thereafter before the hearing was adjourned and in that brief time there was no opportunity given for cross-examination. Accordingly, there was no waiver of the right to cross-examination of the rebuttal witnesses.

Secondly, as to prejudice, if the record is not reopened to permit cross-examination of the rebuttal witnesses, particularly Mr. Baranes, there will be prejudice to the parties which cannot be corrected in Stage Two of these proceedings. This is because in its rebuttal case, for the first time the Applicant conceded the possibility of increasing the setbacks and the height of the and

2007 JUL - 6 PM 2:31  
DC OFFICE OF ZONING  
RECEIVED

ZONING COMMISSION  
District of Columbia

CASE NO. 02-38A

EXHIBIT NO. 85

**HANSON & MOLLOY**

District of Columbia Zoning Commission

July 6, 2007

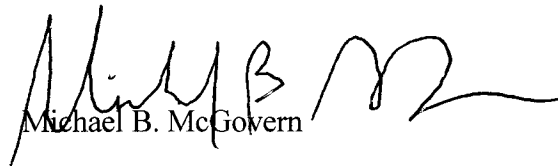
Page Two

proposed buildings in order to create more open space along M Street, S.W.. He suggested that in Stage Two there could be "flexibility" for the project with respect to the building height and massing along M Street. However, Tiber Island wishes to inquire, inter alia, whether there would not be even greater flexibility to mitigate the M Street buildings if the height of the two 4<sup>th</sup> Street buildings were increased by at least a floor in this proceeding. The answer to this and follow-up questions is critical.

The rebuttal witness also addressed the Historic District issue which Tiber Island had raised. Mr. Baranes addressed the issues which Tiber Island Cooperative and the other two parties emphasized in their testimony and would have asked further questions of the rebuttal witness.

In view of the procedural irregularity and the desire of Tiber Island Cooperative and other parties to cross-examine the rebuttal witnesses, we request that the public hearing be reconvened in the near future to permit cross-examination. Tiber Island appreciates your consideration of this request at the meeting on July 9, 2007.

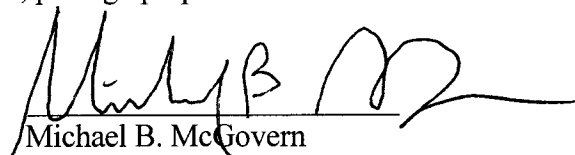
Very truly yours,

  
Michael B. McGovern

cc: Waterfront Associates LLC  
(c/o Wayne S. Quin, Esquire)  
Carrollsborg Square Condominium  
(c/o Henry Baker, President)  
ANC-6D (c/o Max Skolnik, Chair)

**PROOF OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of July, 2007, I served copies of the foregoing letter to the above listed parties by fax and U.S. Mail, postage prepaid.

  
Michael B. McGovern