BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA

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APPLICATION OF	)	
Jemal's Citadel, LLC and Faison Enterprises, Inc.	)	
For a Planned Unit Development	)	**Case No. 04-30**
At 17th Street and Kalorama Road, NW	)	**Hearing: June 6, 2005**
(Square 2572, Lot 36)	)	

MOTION OF ADVISORY NEIGHBORHOOD COMMISSION 1C
FOR WAIVER OF SEVEN-DAY ADVANCE FILING REQUIREMENT
AND LEAVE TO SUBMIT REVISED ANC REPORT

Pursuant to 11 DCMR §§ 3000.8 and 3012.6, Advisory Neighborhood Commission 1C (ANC 1C) respectfully moves for a waiver of the seven-day advance filing requirement and for leave to submit a revised ANC report in the above-captioned case.

Background

As noted in ANC 1C's May 25, 2005 report in this case, timely submitted pursuant to 11 DCMR § 3012.5, the ANC's recommendation for approval of this Application was contingent on agreement by the Applicants and their contemplated grocer-tenant, Harris Teeter, Inc. (HT), to several changes in their proposed Memorandum of Understanding (MOU). Since the May 4, 2005 meeting at which the ANC's Resolution was approved, authorized representatives of ANC 1C have continued to engage with the Applicants and HT in further negotiations aimed at reaching agreement on those unresolved issues. While progress has been made, full agreement has not yet been achieved, and the MOU remains unsigned as of this date.

The ANC's May 4th Resolution expressly contemplated that if agreement had not been reached on all outstanding issues by May 24th, just prior to when public notice of the ANC's [redacted]ng is required to be given, the ANC might revisit this issue at its June 1st meeting

[redacted]

CASE NO. 04-30
EXHIBIT NO. 29

and withdraw or otherwise alter its conditional support for the PUD Application. By notice provided yesterday, the Commissioners and the community have been advised that no definitive agreement on the outstanding issues has yet been reached, and that therefore the Application may be further considered at the June 1st ANC meeting.

The ANC's support is also contingent upon a commitment by the District Department of Transportation (DDOT) to implement three specific actions with regard to traffic and transportation in the affected area. Based upon a meeting between DDOT officials and the ANC's representatives on May 17, 2005, ANC 1C believes that DDOT has or will recommend adoption of those three items. However, the ANC has not yet seen DDOT's or the Office of Planning's report and recommendations to the Zoning Commission and therefore cannot yet be certain that its traffic and transportation concerns have been addressed.

Basis for Motion

Because its June 1st meeting will not occur until after the expiration of the seven-day advance filing requirement specified in section 3012.5 of the Zoning Regulations, ANC 1C respectfully requests a waiver of that requirement to permit the submission of a revised ANC report, whether agreement is reached on all outstanding issues or the ANC chooses to withdraw or otherwise alter its support. In addition, because ANC 1C has not yet seen DDOT's final report and recommendations, it may be necessary for the ANC to insist at the hearing that the Zoning Commission condition any approval of the application on the implementation of the ANC's traffic and transportation recommendations.

Section 3000.8 of the Zoning Regulations provides that the Zoning Commission "may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited

by law." The waiver requested here will not cause any such prejudice. The Applicants, HT, and DDOT have all had ample notice of the ANC's intentions, as set forth in the ANC's May 4th Resolution. The Applicants' representatives have at various times discussed with the ANC's representatives the availability to the ANC of this waiver provision in the event the parties are not able to reach complete agreement before the seven-day filing deadline. DDOT, too, has been aware of the ANC's traffic and transportation concerns for some time. Finally, such a waiver is not otherwise prohibited by law in this case.

Section 3012.6 of the Zoning Regulations contemplates the potential need for an ANC to submit a revised report "[i]n the event the ANC submits its [initial] report on the basis of understandings, agreements, or meetings with the applicant or petitioner which later are modified by the applicant or petitioner." In this case, the parties have continued to meet and discuss the proposed MOU, attempting to negotiate a final agreement based upon those meetings and on understandings previously reached. However, whether a final agreement is concluded by the time of the ANC's June 1st meeting or the ANC withdraws its support or otherwise alters its position with respect to the Application because no final agreement has been reached, the interests of the Adams Morgan community and the intent of the Advisory Neighborhood Commission Act dictate that the record be left open for the ANC to submit a revised report in this case.

Conclusion

For the foregoing reasons, ANC 1C requests that its motion for waiver of the seven-day advance filing requirement and for leave to submit a revised ANC report in connection with the above-captioned case be granted.

Respectfully submitted,

Alan J. Roth, Chairperson
Advisory Neighborhood Commission 1C
P.O. Box 21652
Washington, DC 20009

Dated: May 26, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing and attachments were served by first-class mail, postage prepaid, this 26th day of May, 2005, to the following:

Norman M. Glasgow, Jr.
Holland & Knight
2099 Pennsylvania Ave., NW – Suite 100
Washington, DC 20006-6801

Maxine Brown Roberts
D.C. Office of Planning
801 North Capitol Street, NE
Washington, DC 20002

Ken Laden
District Department of Transportation
2000 14th Street, NW – 7th Floor
Washington, DC 20009

Stephen N. Gell, Esquire
1101 30th Street, NW – 5th Floor
Washington, DC 20007

Alan J. Roth