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August 3, 2006

Ms. Ellen M. McCarthy
Director, Office of Planning
801 North Capitol Street, NE, Suite 4000
Washington, DC 20002

BY E-MAIL

Dear Ms. McCarthy,

Re: JBG Marriott Development Project

We have read three letters sent to your Office by counsel for JBG which argue that you should not undertake Large Tract Review of the planned redevelopment of the Marriott Wardman Park property. Nothing in these letters detracts from the simple point that such review is required by the rules and, therefore, must be undertaken.

What is most striking about JBG's letters is that they do not deal directly with the words of your regulations concerning Large Tract Review or explain why this project is not covered by those regulations. None of these letters even quotes the language of the rule JBG says doesn't apply. The reason is obvious — JBG wants to distract you from the words of the rule because the words of the rule cover this project.

Section 2300.1 requires the Office of Planning "to ensure that there is established a coordinated interagency review process in the District of Columbia" of certain large development projects. It describes the three circumstances in which this is to be done, the first of which applies here:

"(a) Review, prior to the filing of applications for building or construction permits, all large tract development projects comprising three (3) acres or more and any commercial or mixed-use commercial development of fifty thousand square feet (50,000 ft.²) or more gross floor area (above grade) and cellar area (below grade)."

This provision requires Large Tract Review when a project is of a specified geographic scope — three acres — and includes a certain type of development — commercial or mixed-use commercial development of 50,000 ft.² or more. This describes JBG's plans for this property.

The Marriott Wardman Park property is in excess of 16 acres. The proposed project on the site, as described by JBG, is extensive. JBG will

Enlarge and partially enclose the loading dock along the eastern side of the Hotel and remove another open loading dock,

Construct a new underground garage for 289 cars,

Demolish an existing ballroom and construct a new one,

Construct a nine-story residential tower with a three-level underground garage for 459 cars and

Convert the existing Wardman Tower to residential use.

In the Environmental Impact Screening Form it submitted last year, JBG referred to its proposed 90-foot residential tower and said that the project area to be developed for it was 2.8 acres. If the tower alone is 2.8 acres, then the total project must be well in excess of the three-acre test for Large Tract Review.

Even independent of JBG's concession, this project plainly exceeds three acres. The attached photographs show the work being done for one piece of the project, the underground garage. The area that is now under construction appears to be roughly 600 feet long and 175 feet wide, or some 2.4 acres. The footprint of the proposed condominium is somewhat larger than that of the garage, and JBG's EISF says the project area for it is 2.8 acres. Therefore, the combined acreage for the construction of just these two structures would exceed five acres.

JBG's proposed development also meets the other test in subsection (a) in that it includes "commercial or mixed-use commercial development of fifty thousand square feet (50,000 ft.²) or more gross floor area (above grade) and cellar area (below grade)." JBG proposes to build a new garage for the Hotel, a commercial structure. According to the figures JBG provided to your Office, the area of the new Hotel garage is in excess of 100,000 square feet, more than double the 50,000 square feet of commercial development that triggers Large Tract Review. In addition to the new garage, of course, are other projects to redevelop and reconfigure the Hotel, adding to the size of the commercial development.

JBG's counsel's July 5th letter recounts the "legislative history" of these regulations. Legislative history, of course, is relevant *only* to help clarify ambiguities in the language of a rule.¹ The Supreme Court's admonition "we do not resort to legislative history to cloud a statutory text that is clear"² fully applies here. There is no ambiguity in this rule that is in need of clarification, and the history of this provision is irrelevant to an analysis of this rule.

Finally, JBG's counsel spends two pages in his May 3rd letter describing the meetings his client "offered and attended" with community representatives. This apparently is to show that everybody knows all there is to know about his client's plans and that no purpose would be served by Large Tract Review. Simply "offering and attending" meetings is meaningless, of course — it's what happens at those meetings that counts. And those meetings left the

¹ E.g., *United States v. Gonzales*, 520 U.S. 1, 6 (1997) ("[g]iven the straightforward statutory command, there is no reason to resort to legislative history").

² *Ratzlaf v. United States*, 510 U.S. 135, 147-48 (1994).

community with scores of unanswered questions about the nature of the project, its effects on the neighborhood and the immediate impact of the construction.

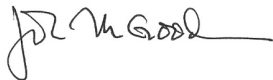
The plain words of section 2300.1(a) require Large Tract Review of JBG's proposed project at the Marriott Wardman Park. The Office of Planning's website clearly puts developers on notice of what its rules require. On the page entitled "Large Tract Review," it states:

"The Office of Planning reviews all developments of three acres or more and all commercial or mixed-use-commercial developments of 50,000 square feet or more of gross floor area. Reviews must be completed prior to the filing of applications for building or construction permits."³

JBG should have made the submissions required by section 2101.3 and waited for the completion of the review before it filed any applications for building or construction permits. JBG chose not to do so, even though it knew what its obligations were. JBG should not be rewarded for ignoring the rules. The permits JBG obtained in violation of the unambiguous provisions of section 2300.1(a) should be revoked and the required Large Tract Review undertaken.

If you need any other information from us, please let me know.

Yours truly,



John M. Goodman
President, Woodley Park Community Association

Copy for Ms. Jennifer Steingasser

³ <http://planning.dc.gov/planning/cwp/view,a,1278,q,568970.asp>

