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April 26, 2001

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BY HAND

Ms. Sheri Pruitt
Secretary
Board of Zoning Adjustment
441 Fourth Street, N.W., Room 201
Washington, D.C. 20001

Re: BZA Application No. 16702

Dear Ms. Pruitt:

Enclosed you will find two replacement pages for the Proposed Findings of Facts and Order previously submitted. We recently discovered that we erroneously referenced a letter of approval from the Waterfront Commission. Thus, the purpose of these replacement pages is to delete the references to such letter in paragraphs 35 and 55. There are no substantive changes to the Proposed Findings previously submitted. Also enclosed is eight (8) copies of the replacement pages for the packages to be submitted to the Board.

Thank you for your assistance in this matter.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Jeannine Rustad Zigner

Enclosures
cc: ANC 2E
Citizen's Association of Georgetown

BZA
Case No. 16702
Exhibit No. 62

Board of Zoning Adjustment
District of Columbia
CASE NO.16702
EXHIBIT NO.62

30. A traffic report, which had been prepared in conjunction with the Department of Public Works in 1998, was submitted by Millennium. According to this report, the peak demand for parking occurs during the weekdays between the hours of 1:30 p.m. and 3:00 p.m. During the early evening hours, the demand for off-street parking drops significantly, and parking lots in the surrounding area have a forty percent (40%) to sixty percent (60%) vacancy rate. As a result, the project's parking, along with other parking facilities within the area, should satisfy nighttime demands generated by the development of the theater amenities, while contributing significant extra daytime parking capacity for the area.

31. Letters of support were received from the Waterfront Center Limited Partnership, which is the owner of the Waterfront Center office building located at 1010 Wisconsin Avenue, N.W.; Grace Episcopal Church, which is located directly across South Street, N.W. to the north of the site; and other neighboring property owners. Additionally, many neighboring property owners signed a petition in favor of the application.

32. The Reverend David Bird of Grace Episcopal Church testified in favor of the application and requested a speedy decision so that construction could continue.

33. Dorothy Miller, a resident of Columbia Plaza in Foggy Bottom testified in opposition of the application. She testified that the Incinerator uses will exacerbate traffic around Washington Circle. However, she was unable to explain how the increased height or FAR would result in this condition.

34. By letter dated March 7, 2001, the DHCD, which has been involved with the project since 1996, when it offered the site for development, strongly supported the variance requests. The DHCD letter emphasizes the importance of the movie theater complex and the need to add the extra floor of residential units in order to maintain the viability of the project. Additionally, Jim Thackaberry testified on behalf of DHCD on behalf of Millennium. Mr. Thackaberry testified as to the development constraints imposed on Millennium with regard to the required uses of the property. Mr. Thackaberry testified that the theater was important to the project, as well as the waterfront, Georgetown and the District, as it was viewed as an anchor to attract people back to this area of the waterfront.

35. The National Park Service, Department of the Interior, submitted a letter in support of the application. The Park Service stated that the project will provide substantial parking, which is necessary in light of the Park Service's commitment to close the Harbour Parking facilities in order to convert the area into a park.

36. The site of the application is located within the jurisdiction of ANC 2E. ANC 2E, which is automatically a party to this application, submitted a written statement stating that, although it was concerned about the added massing and height of the revised project, it did not object to the requested relief and would rely on the Commission of Fine Arts and the Old Georgetown Board regarding height and sight lines.

37. The Citizen's Association of Georgetown ("CAG") requested party status in opposition to the application. Party status was granted, conditioned upon submission of a

51. The Board finds that the CAG did not offer evidence to support its allegations that the requested variances will substantially impair the intent, purpose, and integrity of the Zoning Regulations and Map are cause harm to the surrounding neighborhood.

52. Millennium has addressed the community concerns regarding the additional height of the two (2) residential buildings by providing set backs of the additional height.

53. The impact of the additional height is minimal, as it affects only twenty-three percent (23%) of the site area of the Incinerator project and has little visual impact.

54. The height of the project is consistent with the surrounding neighborhood.

55. The Office of Planning, Department of Public Works, Department of Housing and Community Development, and the National Park Service have recommended that the Board approve the height and FAR variances for the project.

56. The project has received support from the Waterfront Center Limited Partnership, which is the owner of the Waterfront Center office building located at 1010 Wisconsin Avenue, N.W.; Grace Episcopal Church, which is located directly across South Street, N.W. to the north of the site; and other neighboring property owners.

57. The project is currently under construction and scheduled to be completed in early 2002. However, without the requested relief, the project cannot be completed.

III. CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that Millennium is seeking two area variances pursuant to Sections 930.1 and 931.1 of the Zoning Regulations from the height and floor area ratio requirements, respectively, so as to complete the construction of a mid-rise, mixed-use development consisting of residential condominium, theater, hotel and retail uses at 3100 South Street, N.W. (Square 1189, Lot 88). Granting such variances requires a showing that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulty upon the owner arising out of some extraordinary or exceptional condition of the property, such as exceptional narrowness, shallowness, shape, or topographical conditions. D.C. Code § 5-424 (g)(3). Further, the Board must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose, and integrity of the Zoning Regulations and Map.

The Board is thus empowered to grant an area variance where it finds three conditions:

(1) The property is unique because, *inter alia*, of its size, shape or topography;

(2) The owner would encounter practical difficulties if the zoning regulations were strictly applied;

TO: Jerrily R. Hress

FROM: Seth Blumberg

RE: Millenium's Old Incinerator Site

Application # 16702

to change the maximum height allowed by the code.

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2001 APR 25 P 12:21