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May 11, 2001

Ms. Sheila Cross Reid, Chair
Board of Zoning Adjustment
441 Fourth Street, N.W.
Washington, D. C. 20001

BZA
Case No. 16702
Exhibit No. 72

Dear Ms. Reid:

Re: BZA Case No. 16702 - Georgetown Incinerator, 3100 South Street, N.W. Square 1189, Lot 88

Enclosed is the first portion of the response of the Citizens Association of Georgetown to the May 4, 2001 letter from Richard Nettler on behalf of Millennium Georgetown Partners in connection with the Incinerator Site. Our analysis of the financial and legal arguments will be provided on Monday, as the Board agreed to accept materials till noon of that day.

We ask the Board to reject the request for height and area variances, inasmuch as the applicant has not met his burden. We reiterate the arguments previously made, which have not been rebutted in substance, including:

1. The applicant knew every element of the topography, geology, historicity, traffic, parking, and view corridors at the time he purchased the property. He nonetheless pursued purchase and development as a matter of right project, sought and received public benefits (e.g., the closing of Copperthwaite Alley) under that premise, sought and received governmental and community approvals under that premise, and now seeks further consideration because of the very conditions of sale. Under the principle of estoppel, the developer should not be allowed to gain the benefit of an agreement and avoid its burdens.

2. The very height variance sought by the applicant would extend W-2 height restrictions to this site, effectively rezoning the parcel for the applicant's use. This cannot be done.

3. None of the site-specific characteristics has changed since the agreement to transfer the land and complete and final approval for development. The economic health of a tenant is the only thing that has changed. This economic circumstance cannot form the sole basis for approval of variances for height and FAR. To do so would create a precedent that would have massive impact on properties throughout the District. In fact, it would be immediately effective on

Board of Zoning Adjustment
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another project by the same developer, just a block away, in the same floodplain, the same rock, the same or greater historic strictures, the same Whitehurst Freeway (plus potential PCB contamination); this project is currently proposed as a matter-of-right residential development of approximately 85 units.

The consequence of such a precedent would unquestionably cause substantial detriment to the public good and would without doubt substantially impair the intent, purpose, and integrity of the zoning plan.

We ask that you deny the application.

Sincerely,

Barbara Downs

Barbara Downs
President

Enclosure

COMMENTARY ON SUBMISSION OF RICHARD NETTLER ON BEHALF OF MILLENNIUM GEORGETOWN PARTNERS, MAY 4, 2001

We take exception with the following elements:

Extraordinary or Exceptional Conditions Affecting the Site

• Historic Buildings. The historic nature of several buildings is cited as a burden; they are also a great asset entrusted to Millennium's care. They add value and character to the project. Their preservation was a given in the sale.

• View Sheds. The importance of being able to see the historic structures was again a known element at the time of purchase. Moreover, the viewshed from 31st Street, intended to be preserved, has disappeared; there is no access to the site along this street.

• Topography. The sloping site is of great benefit to Millennium, rather than a hardship. It created a triangle of development below the South Street elevation that would not otherwise have been permissible. It too, obviously, was known at the time of sale (although applicant variously describes it as 20', 30' and 40').

Additionally, the floodplain, which is just 7.5' above K Street's elevation (using the applicant's numbers) actually affects little of the commercial space. According to the architect's own presentation before the Old Georgetown Board, the steps at the movie theater entrance raise the level of the theaters above the floodplain.

• Whitehurst Freeway. Surely this element was known to the developer before sale; it apparently is not such an encumbrance because the developer has purchased another site a block away with the same noise and visual barriers on K Street, and seeks to use it for residential properties.

• Deed restrictions, etc. These are agreements entered into by the developer and conditions accepted by him.

Moreover, the applicant has benefitted significantly from actions of governmental and community groups motivated to protect and further enhance the historic elements. City Council closed a public street in order to facilitate development of the site and preservation of the historic buildings. This is a benefit of considerable financial worth.

Similarly, the public and private initiative in creating the Georgetown Waterfront Park, a multi-million-dollar asset across the street from this project will benefit the applicant

greatly, both for the ambiance that it will give to the streetscape and pedestrian traffic, and to the views it will create for the upper-level residences.

The ANC's letter is mischaracterized by the applicant. The ANC effectively gave a proxy to the Commission of Fine Arts and the Old Georgetown Board to act for them in determining the appropriateness of the massing on the site that would be created by an additional floor. The Commission's statement is unequivocal. The "great weight" must be given to that statement.

Strict Application of the Zoning Regulations ...

The applicant's recitation of what might have been is irrelevant. Millennium did not seek a PUD or an area variance at the time, nor indicate that variances would be sought to complete the project. There is no guarantee that the case for a PUD or for variances would have been successful at that time, nor any guarantee that the applicant would have been the successful bidder were the need for these variances known at the time of the RFP process. Similarly, there is no guarantee that the subsequent approvals from the ANC, the NCPC, and the various other approving bodies would have been granted. given those alternative circumstances. In fact, the NCPC staff report recommending approval of the land transfer specifically cites the protections of W-1 zoning and the Old Georgetown Act as shields against intense development.

CAG's comments on the remaining sections will be included as part of Monday's submission.