THE CITIZENS
ASSOCIATION
OF GEORGETOWN

June 12, 2001

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

Dear Ms. Reid:

Re: Application No 16702 – Millennium Georgetown Partners

The enclosure contains our comments on the streetscape images that were provided by the applicant in response to the Board's request. However, in order for CAG to comment intelligently on what will be presented (i.e., a continuous visual presentation, not a series of computer-generated stills), we have asked MGP to provide us with a duplicate of their video or computer presentation so that we may accurately review it beforehand and waste no time during next week's hearing attempting to identify inaccuracies in a presentation we otherwise would not have seen before.

Also enclosed are our arguments concerning the "third prong" of the test for variances, which we believe compel the Board to reject these applications for an area and height variance made by Millennium Georgetown Partners.

Especially when placed in the context for variances in Historic Georgetown, such violation of the zoning envelope cannot be countenanced. A search of Office of Zoning records reveals that BZA has never granted a height variance for new construction in Georgetown. BZA has never granted a variance to add a floor or to add usable height to a structure. BZA has never reviewed a height variance case in Georgetown involving commercial or waterfront zoning. All BZA cases in Georgetown involved R-3 zoning, except for a single case in R-1-B.

As established in Citizens Association of Georgetown, Inc. v. District of Columbia Zoning Commission, 402 A.2d 36, 41 (D.C. 1979), the Board's decision must "rationally follow from the facts." We strongly believe the facts can only lead the Board to reject this application.

Sincerely

Raymond J. Kukulski
President

Enclosure

3222 N Street, N.W.
Washington, DC 20007
TEL: 202-337-7313
FAX: 202-333-1088

BZA
Case No. 16702
Exhibit No. 79

Board of Zoning Adjustment
District of Columbia
CASE NO.16702
EXHIBIT NO.79

Citizens Association of Georgetown
Materials for Further Hearing, June 19, 2001
Board of Zoning Adjustment No. 16702

Response to Millennium Filing of June 1:
Visual Impact of Additional Floor

The set of computer images provided by MGP in response to the Board's request present a number of difficulties. The corners of the building do not represent, as the Board requested, a series of setbacks in 10' increments, nor do they reflect what it is proposed would happen along the remaining south facade of the top of the building. The mass at the roofline varies from scheme to scheme, not just in the setback, but in the arrangement of elements of the building. Moreover, the surrounding buildings' mass is not accurately presented, either at Wisconsin Avenue or at 31st Street.

Even with these limitations, the images provided nonetheless reveal that the additional floor would certainly have an adverse impact on both Wisconsin Avenue and on 31st Street and thus on the historic viewsheds of Georgetown. By comparing the approved structure with either of the proposed alternatives it is clear that the viewshed from either Wisconsin Avenue or 31st Street is materially obstructed by adding an additional floor to an already high, massive building. In addition, a pedestrian walking next to the proposed structure on those streets will feel a sense of congestion because of the canyon created. Even with a 10' set back, the height of the additional floor significantly reduces views and creates more mass which is clearly visible from the street. .

The Burden of an Applicant Seeking a Variance:

An applicant seeking a variance under D.C. Code §5-424(g)(3) must show **first**, that "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," **second**, "the strict application" of the zoning regulations will cause "peculiar and exceptional practical difficulties" or "exceptional and undue hardship" to the owner; and **third**, that granting the variance "so as to relieve the difficulties or hardship, provided that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."

Impairment of the Intent, Purpose, and Integrity of the Zone Plan and Map:

Most importantly, granting the variances requested would harm the public good and emasculate the protections against the constructing of excessively high, massive buildings on the Georgetown waterfront which are the very purpose of W-1 zoning. As the Board is well aware, W-1 zoning's height and mass restrictions were imposed to protect the important vistas

of the river from the streets leading down to the river and to avoid Rosslynizing the Georgetown waterfront with high, massive buildings. The additional impairment of the viewsheds of the waterfront looking down both Wisconsin Avenue and 31st Street as well as the impact of the proposed height and mass of the structure on the view from those streets and the waterfront park are the reasons this Association and the Commission on Fine Arts oppose the variances sought.

It is difficult to comprehend the impact on pedestrians that the additional height and mass will impose from applicant's viewshed submission. However, the applicant's own exhibits demonstrate that the proposed additional floor will certainly have a significant adverse impact. Exhibit A provides the expert assessment of architect Outerbridge Horsey regarding the impact

In addition, the Georgetown Incinerator sits squarely within the zone accorded the most protection of any of the waterfront areas: W-1. The W-1 Zone is the most restrictive of the waterfronts zones and was created specifically to protect the view sheds as well as 18th and 19th century structures like the Incinerator. As noted previously, the applicant has already been able to measure the 40′ height limit in W-1 from an advantageous location - a small street at the top of the project. Thus, the approved structure *already* exceeds by a factor of two the height restriction for other buildings with entrances off of K Street. J. Kirkwood White, who was integrally involved in the creation of the waterfront zoning, is prepared to offer expert testimony regarding the aims this zoning intended to accomplish.

It is apparent, if ironic, that the approved building already exceeds the height that the W-1 zoning was enacted to protect. While current regulations permit the matter-of-right building to that height under these circumstances, the Board cannot easily entertain granting a further height variance for an entire city blockfront in the most protected W-1 site in Georgetown, overturning the express purpose of the zone plan and map for this massive area.

While Millennium argues that another 10′ added to such a massive structure does not make that much difference, granting such a variance based on the flimsy economic arguments made here would threaten the very viability of W-1 zoning in Georgetown. Granting a variance would in effect amount to a rezoning of the most important portion of the Georgetown waterfront and create a harmful precedent available to this and other Georgetown developers.

We are very concerned that if the BZA grants this variance, it would be forced to grant variances to property owners similarly situated "as a matter of due process." Capitol Hill Restoration Society, 534 A.2d at 942 (holding that if the BZA were to grant variances where the practical difficulty is not peculiar to a particular piece of property, requests from property owners similarly situated would have to be granted as a matter of due process). Georgetown developers - indeed, developers anywhere in the District of Columbia - who experience financial problems, or merely experience some development cost that is higher than they anticipated or would like it to be, will seek to externalize the costs of these difficulties by overbuilding the historic neighborhoods the zoning ordinances are meant to protect. Exhibit B provides the expert opinion of Richard N. Wolf on the precedent-settting nature of a variance in this case, and the adverse impact it would have on the city's 39 Historic Districts.

We will underscore at the June 19 hearing, the ready string of similarly situated sites along the Georgetown waterfront that would be entitled to similar redress of asserted practical difficulties, several of which are reflected in Exhibit C, where a sloping site, a rock substrate, a historic site, and an unproven claim of economic difficulty would as readily apply, changing the nature of the C&O Canal and of Georgetown itself to a canyon-wall barrier at the foot of Georgetown.

Why Granting Variances Would be Wrong in This Case:

The facts underscore that the site is not unique: "To support a variance, it is fundamental that the difficulties or hardships be due to unique circumstances peculiar to the applicant's property and not to general conditions in the neighborhood ... Granting a variance under these circumstances would be wrong, Palmer v. Board of Zoning Adjustment, D.C.App.,384 A.2d 535, 542 (1972)

No facts indicate the project is financially unviable without the variance: " ... a variance cannot be granted where property conforming to the regulations will produce a reasonable income, but, if put to another use, will yield a greater return" ... , Palmer, supra. The applicant has not refuted the economic analysis provided in CAG's filing of May 14, 2001 [see also Taylor v. District of Columbia Board of Zoning Adjustment, D. C. App., 308 A.2d 230 (1973) ... "the Board simply has no authority to grant a variance in order to assure the petitioner a profit.

The facts support the precedent-setting nature of this case. A search of Office of Zoning records reveals that, despite numerous applications for height variances, BZA has never granted a height variance to add a floor. BZA has never reviewed a height-variance case in Georgetown involving commercial or waterfront zoning.

The impact of the variance would be compounded because of the mass of the site. The Zoning Code adopted the use of Floor Area Ratios for the express purpose of controlling the level of activity in commercial properties, in order to avoid overdevelopment and the crowding of activity. Variances, normally applied to individual lots where the impact is limited, would in this case apply to the massive base of an entire city square block. FAR variances that increase by nearly 20% the amount of activity on a site are no modest changes, but represent substantially greater activity for, not a small or irregular site, but an entire city block.

Similarly, the height variance would apply to the entire southern portion of the site for the length of a long city block. Especially when contrasted with the BZA's historic rejection of full-floor height variances in Georgetown, such violation of the zoning envelope cannot be countenanced.

Fundamental Flaws in the Application:

While the bulk of these arguments have dealt with the third prong of the variance test, we respectfully direct the Board's attention to the following issues.

First, the property in question is hardly unique. The Georgetown waterfront is replete with the historical structures which applicant attempts to characterize as a "burden" even though their presence enabled the applicant to obtain substantial concessions in price and an alley closing. The topography of the Georgetown waterfront is shared by all nearby property and, far from presenting a unique challenge to development, has allowed the applicant to construct a building in excess of 90' high as measured from K Street, despite the 40' limit in a W-1 zone. As the Court of Appeals held in Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 939, 942 (D.C. 1987), a property's location in an historic district is not sufficient to justify a finding of uniqueness, otherwise every property so classified would be entitled to a variance. See also Myrick v District of Columbia Bd. of Zoning Adjustment, 577 A.2d 757, 760 (DC 1990) (granting a variance where a particular hardship is common to an entire neighborhood would amount to an amendment of the zoning regulations, an action only the Zoning Commission is empowered to take).

Second, the applicant has not shown that compliance with zoning will cause undue hardship or create practical difficulties. The District of Columbia Court of Appeals has held that even *substantial* increases in cost do not satisfy this test in an application for an area variance. Barbour v. District of Columbia Board of Zoning Adjustment, 358 A.2d 326, 327 (D.C. 1976) (holding that even where costs would be fifty to ninety percent more without an area variance, the burden for obtaining the variance would not be met); Myrick, 577 A.2d at 761; Gilmartin, 579 A.2d at 1170. The applicant has claimed but failed to prove that the loss of one prospective tenant renders the project non-financially viable under the current zoning restrictions and approvals already granted. The applicant not only ignores the income stream from the theaters he proposes to operate but also ignores the potential for the same space to be used for other commercial purposes.

For the above stated reasons, the Citizens Association of Georgetown respectfully requests that the application for variances be denied.

1249 31st Street, NW
Washington, DC 20007

Exhibit

June 11, 2001

Ms. Sheila Cross Reid, Chair
Board of Zoning Adjustment
Washington, DC

Re: Georgetown Incinerator Project - BZA No. 16702

Dear Ms. Reid:

I am writing to you as a longtime resident of Georgetown. My wife and I reside at 1249 31st Street, NW about two blocks from the above project. I am a registered architect in the District of Columbia and have my offices in Georgetown at 1228 1/2 31st Street, NW, also about two blocks from the project site. I also am a past member of the Board of Directors of the Citizens Association of Georgetown for five years, serving as Vice President and as Treasurer.

I am writing in support of the Citizens Association of Georgetown's position opposing the request for further zoning relief for the Incinerator project in order to add a level of residential apartments to the south side of the complex. I also note that the the Old Georgetown Board and the Commission of Fine Arts, before which I have appeared numerous times, have also examined this project closely and have also strongly opposed this request for further zoning relief.

Opposing this latest request for relief for this project is not easy for me as I have a high regard for Mr. Lanier personally and professionally. Over the past several years Mr. Lanier has brought a much needed infusion of investment into our neighborhood which has resulted in the renovation and repair of numerous commercial establishments. This has resulted in a significant revival of the commercial area of which most of us who live in Georgetown are very appreciative.

His warm personal manner in dealing with all the regulatory complexities of his projects has served the process well and earned him the justified respect of the community. Notwithstanding his contribution to Georgetown (which also no doubt has been reasonably profitable for his investment group), I believe that this request for additional zoning relief for this project to allow him to offset an economic setback of the withdrawal of one of his investment partners is simply not justifiable. If granted this additional level of apartments would adversely impact the light and air as well as further obscure the view of the river of the residents and visitors on the streets around the

project site.

The building complex in question is already tremendously oversized. Due to the dramatic topographical condition at this site, a 40 - 50 foot drop from the north to the south side, the height of the building at the south side currently approved at 90 feet high is over twice the allowable height twice the allowable height of 40' which, conveniently, was measured at the top of the hill, the so-called "front" of the building. This technical interpretation has allowed the building to be almost twice the size intended by the Zoning Code. In fact this project is not simply a single building but an enormous complex with full block frontages of four separate streets. As currently approved this building will tower over its immediate neighbors. After the project is completed the street I live on, 31st Street, will become a canyon as pedestrians descend down the hill on 31st Street from the commercial center of M Street to the waterfront park. Adding more height to this building will make this unpleasant condition appreciably worse.

In summary despite all the good that Mr. Lanier has brought to our community, I think the remedy to his immediate financial problem for this project must lie elsewhere. It is hard to believe that a person of his abilities and resourcefulness cannot find further investors to participate in this venture rather than seeking the easy solution of adding a floor to this building and causing further significant impact to the neighborhood and adjacent waterfront park. The narrow, technical interpretation of the building height mentioned above has already allowed this complex to be almost twice the size intended by the Zoning Code for this W-1 zoning district. To allow it to be any larger would not only further undermine the zoning regulations for this district but also would set an unfortunate precedent by allowing the zoning variance process to be used to offset a temporary economic setback.

I believe the variance request for economic relief through by enlarging a building that is already significantly over-sized is simply not justifiable and should not be granted.

Thank you for your consideration.

Sincerely,

Outerbridge Horsey

Outerbridge Horsey, AIA

Exhibit B

RICHARD N. WOLF
146 ELEVENTH STREET, SOUTH EAST
WASHINGTON, D.C.

June 11, 2001

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

Dear Ms. Reid:

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

I am writing this letter at the request of the Citizens Association of Georgetown in connection with the above styled case. Since 1965 I have been involved in planning, zoning, and historic preservation issues in the District of Columbia as a lawyer, a member of various citizen groups concerned with these issues, and as a governmental appointee on a special panel to report on trash transfer stations. I have become familiar with issues concerning the Georgetown waterfront both as an expert witness many years ago for the community in regard to the Washington Harbor development and having reviewed relevant documents in this matter. Attached is a copy of my resume which references many of these activities.

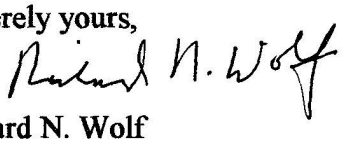
The facts and issues in this case appear to be the following. The applicant has a fully permitted development at the site which meets both zoning and historic district standards for Georgetown. He is now applying for additional height, bulk , and density which require two variances: one for height and one for FAR. The reasoning is that he needs the extra revenue to support financing theatres for the development which under his original proposal were to be financed by the theatre chain, now in bankruptcy. There is no real claim of financial hardship here. It is a case of making more money with the variances than without. The Office of Planning report supports this request on the basis that the District is "under screened", in other words there are not "enough" movie theatres in the city. It is my understanding that the increase in height and FAR has been rejected by the Fine Arts Commission in its capacity as overseer of the Old Georgetown Act which sets historic district standards for the area.

Based on these facts and the issues it is my opinion, as an expert, that the granting of these variances is not warranted. To grant the variances would gut the uniformity of zoning provisions of the zoning code without reason and create the basis for other similarly situated properties in Georgetown and throughout the other 39 historic districts to be developed far beyond their zoned capacity . It should be noted that zoning is

frequently at variance with historic districts and buildings because the city has not coordinated zoning and historic preservation in its codes. Fortunately, the law regarding historic preservation has usually trumped zoning, and the city has been enjoined in the Comprehensive Plan to implement such coordination. This application is particularly egregious, because zoning and historic preservation mesh with the original proposal. The Office of Planning's support on the basis that the District needs more motion picture screens is frivolous and consists of ad hoc policy making in land use. Such a policy should first find its way into the Comprehensive Plan and then be implemented through zoning.

I hope these views will be of assistance to the Board of Zoning Adjustment in reaching its decision in this matter. I am not a member of the Georgetown Citizens Association nor have I been paid for this letter nor do I have any sort of financial interest in any of the matters at issue here..

Sincerely yours,



Richard N. Wolf

146 11th Street, SE
Washington, DC 20003

Phone 202-543-4353
E-mail richwolf@mci2000.com

Richard Noel Wolf

Professional experience

1961 – 1998 National Aeronautics and Space Administration Washington, DC

Senior Attorney

- Counsel to the NASA Head Quarters Office of Administration

  Designed and implemented policies and regulations on ethics, personnel, finance, travel, and pay administration issues.

  Developed the first NASA organizational conflict of interest and standard of conflict regulations.
- Counsel to the NASA office of Equal Opportunity

  Implemented EX. Order 11246 – Affirmative Action in employment in Government contracts
- Counsel to the NASA Industrial Relations Office

  Advised the Director of the Industrial Relations Office on Government contract labor laws including: Davis-Bacon, Walsh-Healy, Service Contract Act, and the Contract Work Hours Act.
- Counsel for Freedom of Information Act matters; NASA HQ
- Counsel for Organizational Conflict of Interest problems
- Counsel to NASA's Minority and Small Business Office
- Counsel to NASA's Office of Small Business Innovation Research
- Counsel to the NASA Head Quarters Procurement Office

  Lead advisor on procurement matters: statements of work, types of contracts, source Boards, de-briefings, and litigating protests and claims

  Sole counsel for the procurement of $800 million dollars of goods and services a year including the NASA HQ building, space, vehicles, computers, grants, and contracts for service.
- Litigated numerous cases involving "protests" before the General Accounting Office and the General Services Administration Boards of Contract Appeals; breach of contract claims before the NASA Board of Contract Appeals, the Claims court and Federal District Courts, and cases before the Department of Labor Wage Appeals Board.

1960-1961 U.S. Commission on Civil Rights Washington, DC

Staff Attorney

- Co-authored the police brutality portion of the 1961 Commission Report
- Conducted an investigation of the Chicago Police Department.

1958-1960 New Haven County Jail New Haven, Connecticut

Legal Analyst

- Examined the issue of recidivism among jail inmates.

Community

1978 - 1981 Capitol Hill Restoration Society Washington, DC

activities **President**

1970 - Present Capitol Hill Restoration Society Washington, DC

City Planning Chair

- Litigated zoning cases before the BZA, Zoning commission DC Court of Appeals
- Established through litigation the application of the DC administrative Procedure Act to Zoning which gave standing to community organizations in zoning cases
- Founded the Park-in Coalition Consisting of DC neighborhood groups which established through litigation up to the Supreme Court the right of cities to implement "residential permit parking"
- Helped write and lobby through the DC Council the DC preservation law
- Assisted in the creation of the Capitol Hill Historic District
- Fought to enact the Comprehensive plan of the District of Columbia and co-authored the Ward 6 portion of the Plan
- Testified numerous times before the City Council on planning, preservation, and environmental issues

1978 - 1984 Citizens Planning Coalition Washington, DC

Founding Member

1975 to the present Don't Tear It Down now DC Preservation League Washington, DC

Founding Member

1969 to the present Committee of 100 on the Federal City Washington, DC

Two Term Trustee

- Program Chair and worked on initiatives of the Committee concerning planning and preservation issues city-wide: DC Stadium, Childrens Island, Georgetown waterfront, etc

1990 -1999 Ellen Wilson Community Development Corporation Washington, DC

Founding member and Treasurer

- To develop the old Ellen Wilson public housing site into a mixed income community under a 26 million dollar Hope 6 grant from HUD
- Project has already won an AIA Honor Award for Urban Design and will be fully built out and occupied by the middle of 1999
- Played a key role in every aspect of the project over its nine year life: reviewed and wrote contracts for all of types of development related services
- Project involved physically building an entire new community of 152

residences on 5.5 acres

- Created a mixed income community using the concept of a limited equity co-op with cross subsidization of lower income owners by higher income owners. The result is the elimination of future housing subsidies.
- Control by either HUD or the local DC Housing Authority is eliminated and vested in a trust controlled by community members.

1980 - 1989 Capitol Hill Hospital Washington, DC

Chairman of the Board and Board Member

- Formed Medlantic Healthcare group with the Washington Hospital Center
- Member of the Medlantic Board Audit Committee for nine years

Awards received

Awarded Capitol Hill community Achievement Award, 1988

Political Activities

Worked on the Betty Kane, John Ray and Sharon Ambrose campaigns

Wrote John Ray's policy paper on planning and preservation the last two times he ran for Mayor

Finance Chair for the 1998 Ambrose campaign for Ward 6 Council Seat

Original member of the "Draft Tony Williams Committee"

Education

1950 - 1954 University of Michigan Ann Arbor, Michigan

BA Political Science with Honors

- Phi Beta Kappa, Phi Kappa Phi, Pi Sigma Alpha, and Delta Sigma Ro

1954- 1957 Yale Law School New Haven, Connecticut

LLB

- Director, Barristers' Union : Student Group engaged in staging mock trials

Professional memberships

Bars of Connecticut and the District of Columbia

Member of the D.C Bar Committee on D.C. Affairs

Member of the D.C. Bar Committee on Land Use

Personal Facts

Born in Chicago, Illinois.

Raised in Grand Rapids, Michigan.

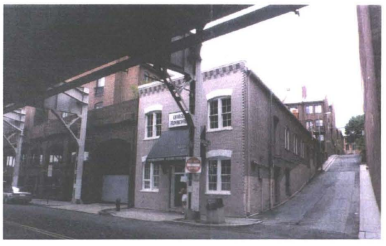
Resident in Washington, DC since 1964 and the Washington area since 1960.

Married to Dr. Muriel Wolf, Associate Professor of Pediatrics, GWU

Relevant Commercial Sites in Georgetown



Water Street











C&O Canal
&
M Street





