Georgetown Incinerator Variance Case

Comments of Kirk White, retired zoning lawyer and city planning official

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For the last 30 years, I have followed the city's oft-frustrated attempts to sell the Georgetown Incinerator. It hasn't been a pretty process. Now, the city has selected an experienced and respected developer. So, it reasonable to expect a glorious mixed use development on the site, one that will bring the District substantial new tax revenue and jobs. This is a reasonable assumption, but the development is not there yet.

The developer has applied for a variance that cannot be approved, unless the Board is willing to throw out settled case law concerning the criteria that can justify a variance in the District of Columbia.

The developer's primary case is based mostly on economic hardship, primarily involving an ailing prospective tenant.--a movie theater complex. This factor cannot constitute a variance criterion

The developer is requesting additional bulk and height to cover the possible economic problem of the bankrupt movie theater tenant. This is a nagging problem but it is a transitory problem. Many movie theaters go bankrupt and reopen about as fast as rug dealers.

This case demonstrates that variances must be based on more objective criteria such as the hardship of unusual topography or other physical factors concerning the lot that are unique and not shared by other lots in the vacinity. This is what the District's zoning statute states .The District's court decisions require a strict reading of the narrow scope of the variance statute.

The Board should also be aware of the planning and zoning background of the Georgetown Waterfront. The Waterfront Zones were based on a careful analysis by the Zoning staff and the National Capital Planning Commission of the land uses of the area, including the proper height and bulk of buildings. Landowners and citizens rely on these studies and the resulting Waterfront Zoning which was adopted nearly 30 years ago.

Finally, this writer, as well as many District officials, are anxious to see Mr. Lanier's project go forward under existing planning and zoning for the Georgetown Waterfront. If Mr. Lanier can demonstrate that he needs economic relief, the District now has a battery of economic tools under Mr. Price's jurisdiction. This would seem the way to go rather try to push the Board to contort its legal jurisdiction with a variance.

BZA
Case No. 16702
Exhibit No. 83

Board of Zoning Adjustment
District of Columbia
CASE NO.16702
EXHIBIT NO.83