BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of Washington Metropolitan Area Transit Authority

BZA Application No. 16726
Public Hearing: June 5, 2001

APPLICANT'S RESPONSE TO A "MOTION FOR REHEARING OR RECONSIDERATION" FILED BY A NON-PARTY TO THE PROCEEDING

Washington Metropolitan Transit Authority ("WMATA"), Applicant in the above-referenced case (the "Applicant"), hereby requests the Board of Zoning Adjustment ("BZA" or "Board") to deny the motion for a rehearing or reconsideration of the approval of BZA Application No. 16726, submitted August 7, 2001, by Beverly A. Bakeir, an individual who appeared at the hearing and who not only stated that she had no objection to the application but also voiced support for the application. In support of its request, the Applicant states the following:

1. As a practical matter, the issue raised by Ms. Bakeir in her motion, namely, assurance that the development project before the BZA would operate at reasonable hours, was specifically addressed by the BZA at the public hearing. While the Board decided that reference to such an issues was not appropriate to be made part of its Order, the Board did leave the record open specifically so that the Applicant would submit a statement addressing such construction issues as noise levels, operation hours and removal of construction-related debris. The Applicant submitted said statement to the record on June 18, 2001.

2. The motion is improperly filed as it is has been filed by an individual that was not a party to the underlying application. Section 3126.2 of the Zoning Regulations provides in part that, "any **party** may file a motion for reconsideration or rehearing of any decision of the Board ..."(emphasis added.) Ms. Bakeir was provided opportunity both prior to and during the public hearing on June 5, 2001 to request party status in the application process. In filing her motion for reconsideration or rehearing, Ms. Bakeir attached a copy of the notice advertising the public hearing, which she originally received from the zoning office. That notice sets forth in detail the requirements she needed to follow to obtain party status prior to the hearing date. On the day of the hearing, the Board Chairperson asked if there were any individuals other than the applicant or the Advisory Neighborhood Commission that were requesting party status. Ms. Bakeir never requested to be admitted as party to this

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application. Thus, she is not authorized to now file a motion for reconsideration or rehearing to the Board.

3. The motion is also deficient in that it is untimely. Section 3126.2 of the Zoning Regulations further provides that, a motion for reconsideration or rehearing must be filed within ten (10) days from the date of issuance of a final written order by the Board. The final date of order in Application No. 16726 was July 25, 2001. Ms. Bakeir's motion was not filed until 13 days after the final date, on August 7, 2001.

4. The motion is further deficient in that it fails to state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion and the relief sought, as required by §3126.4 of the Zoning Regulations. In addition, the motion fails to present any new evidence that could not reasonably have been presented at the original hearing, as required by §3126.6 of the Regulations. While Ms. Bakeir registers some complaint as to the manner in which she believes that she was treated by the Board during the hearing, she presents no argument as to any grounds of error in the Board's decision. Nor does she offer any new found issues for the Board to consider. Finally, as stated above, the apparent sole issue of concern to Ms. Bakeir, the hours of construction, was specifically addressed by the Board and made part of the record in this case.

5. The acceptance of such a motion by the board after a hearing in which a person participated but was not a party nor in opposition to the case sets a potentially dangerous precedent and undermines the finality of the Board's hearing and decision-making process. It encourages persons to attempt to have issues addressed outside the formal hearing process where they had every opportunity to make their views known. The hearing in this case was over two hours in length, certainly sufficient time for any legitimate issues to be addressed.

For all the above-stated reasons, the Applicant submits that the motion for reconsideration or rehearing submitted by Beverly A. Bakeir, is deficient as a matter of law and requests that the Board deny said motion as untimely and improperly filed and, in any event, deficient on the merits.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By _____
Norman M. Glasgow, Jr.

_____
Dennis R. Hughes

CERTIFICATE OF SERVICE

I hereby certify that on this, the 13th day of August, 2001, a true and correct copy of the foregoing was furnished by U.S. Mail to the parties to BZA Application No. 16726, namely:

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