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January 13, 2003

By Hand Delivery

Mr. Geoffrey Griffis
Chairman
District of Columbia Board of Zoning
441 Fourth Street, N.W.
Suite 410
Washington, DC 2001

Dear Mr. Griffis:

Enclosed please find our Statement in Opposition to BZA Application No. 16966.

If you have any questions, please feel free to contact me at (202) 663-9062.

Sincerely,

Martin P. Sullivan

cc: J. Page Lansdale (facsimile)
Robert Royer, Esq. (facsimile)
Michael A. Cain, Esq. (hand delivery)
Arthur Jackson, Office of Planning (e-mail)

Document #: 1299288 v.1

BZA
Case No. 16966
Exhibit No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO.16966
EXHIBIT NO.31

STATEMENT IN OPPOSITION TO BZA APPLICATION NO. 16966
on behalf of Chevy Chase Bank, FSB, owner of 925 15th Street, N.W.

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I. Introduction

Chevy Chase Bank, FSB ("Chevy Chase") is the owner of the property and improvements located at 925 15th Street, N.W. (Square 218, Lot 75)("**Chevy Chase Property**"). The Chevy Chase Property contains a six-story building consisting of 18,061 square feet ("**Chevy Chase Building**") and is immediately adjacent to the rear of the property which is the subject of this BZA Application, 1426 – 1430 K Street, N.W. ("**Applicant's Property**"). Approval of a variance from the rear yard setback requirement for a building of this height will have a direct negative impact on the light and air of the Chevy Chase Building, and could cause significant economic harm to the property interest of Chevy Chase.

The Applicant proposes to extend a 130 foot building; 11 feet closer to the Chevy Chase Building than is permitted by the Zoning Regulations. On behalf of Chevy Chase, we oppose this request for a variance, as well as the request for special exception relief from the rooftop structure setback requirements. The Applicant's request fails to meet the legal criteria necessary for approval of a variance. Furthermore, approval of this application is likely to have a substantial negative impact on the Chevy Chase Property, and would clearly impair the intent, purpose and integrity of the Zoning Regulations as they relate to rear yard setbacks.

II. Legal Requirements for Variance Relief

Pursuant to Section 3103.2 of the Zoning Regulations, the Applicant must prove, that, by reason of exceptional narrowness, shallowness, or shape of its property or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of its property, the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulty to the Applicant. This relief may be granted by the BZA only if the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan.

A. Exceptional Situation or Condition Resulting in a Practical Difficulty.

The Applicant alleges that certain conditions of the property render it economically unfeasible to develop the property to its best economic use.

1. The Applicant first alleges that its property is exceptional because it is a "very small, infill Downtown site" (p.8, Donnelly Statement). The Applicant's Property is not at all exceptional in size; it consists of 7,197 square feet of land area. The subject square, Square 218, is made up of 11 separate lots. Three of these lots are very large; over 20,000 square feet each. Of the eight remaining properties in Square 218, the Applicant's property is, in fact, the largest. The fact that the Applicant's property is an infill site is obviously not exceptional or unique in any way in the District of Columbia, in the downtown area, or in the immediate K Street area.

2. The Applicant alleges that the depth of its property is exceptionally short. Rear yard setback requirements are in place in the Zoning Regulations to provide light and air

to adjacent properties. The rear yard requirement, past the 12 foot minimum requirement, is based entirely on the height of the proposed building, and is not based on the depth or size of the lot. If a building is lower in height, less of a rear yard is required. The intent of the required rear yard setbacks is clear. As a building gets taller, its impact on the light and air of surrounding properties will be greater, and therefore a greater setback is required. Approval of this variance request would serve to provide economic benefit to one property owner at the expense of an adjacent property owner. The rear yard requirements of the Zoning Regulations are meant to protect adjacent properties from such damage. To disregard the Zoning Regulations in this case would therefore greatly impair the intent, purpose and integrity of those Regulations. The property is not impractical to develop without the rear yard setback variance. It merely must be developed at a lower height, as are other properties in the subject square, including the property adjacent to the east of the Applicant's Property (seven stories), 923 15th Street (six stories), and the Chevy Chase Building (six stories).[1]

3. The Applicant alleges that its property is exceptional because the property does not back up to a public alley, thereby preventing it from taking advantage of a mid-alley measurement point for the rear yard. This condition could not possibly be unique, as there are Zoning Regulations specifically for this situation (Section 774.9(b)). In fact, the Applicant is actually requesting a variance from 774.9(b), not 774.1. It is a basic bootstrap argument for the Applicant to claim that because its property backs up to

[1] Frontage on 15th Street, NW has a width of 110 feet, meaning that properties on this street may also build to the maximum height permitted under the Height Act.

another's property line, rather than an alley, that it is entitled to variance relief from the requirement to measure the rear yard from the property line. Squarely fitting into a regulation can not be the reason why one is entitled to relief from that same regulation. The sole purpose of Section 774.9(b) is to provide adequate light and air when an alley does not exist to provide such light and air. Approval on this basis would be a direct attack on the integrity of the Zoning Regulations because it would effectively render Section 774.9(b) null and void. Any property owner subject to 774.9(b) could claim a unique condition warranting a variance.

4. The Applicant alleges that the shape of its property is unique. The shape of the Applicant's Property clearly is not unique. But for a slight "cut-out" in its southeast corner, the shape of the Applicant's property is practically square. For comparisons to other properties, the Board need look no further than the adjacent Chevy Chase Property, which in fact has an almost identical "cut-out" in its northwest corner.

5. The practical difficulty asserted by the Applicant is that it will not be able to develop this property to its best economic use. Not being able to develop a property to its most profitable use, however, is not considered to be an exceptional or practical difficulty justifying variance relief, *particularly when such relief would be at the expense of an adjacent property owner*. The Applicant alleges other practical difficulties relating to the actual building design, such as elevators, but these are merely design features that impact the profitability of the proposed development.

B. Substantial Detriment to the Public Good.

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment,* 320 A. 2d. 291 (D.C. 1974) that a variance may not be granted, even to alleviate a bona fide serious hardship to an owner, if the granting thereof would adversely affect the surrounding neighborhood. Neither a bona fide serious hardship, nor a practical difficulty, exists in this case. Nonetheless, even if one did, the Board must not grant the requested variance because of the direct adverse affect it would have on the Chevy Chase Property. The Applicant claims that it is providing a rear yard that is only "at a slightly reduced dimension than that required by the Zoning Regulations" (Donnally Statement, p. 6). The rear of the proposed building will actually be over eleven feet closer to the Chevy Chase Building than is required by the Zoning Regulations, which is a *forty percent* decrease in the required setback. Forty percent is not "slight". Reducing by forty percent the required space between a 130-foot building and its abutting six-story neighbor will obviously have a significant impact on the amount of light and air between the adjacent buildings. If such a tall building is moved over forty percent closer to the Chevy Chase Building, leaving a mere sixteen feet between the Applicant's 130 foot building and the smaller Chevy Chase Building, there is the potential for significant property value damage to the Chevy Chase Property. It is fundamentally unfair, and damaging to the integrity of the Zoning Regulations, to grant a property owner a variance that will directly harm an adjacent neighbor.

C. Impairing the Intent, Purpose and Integrity of the Zone Plan.

Approval of the variance request will absolutely impair the intent, purpose and integrity of the Zone Plan. Section 774.9(b) of the Zoning Regulations is written for one type of property only – any property that does not back up to a public alley. The purpose of this regulation is obvious – to provide adequate setbacks when an alley does not exist to provide such setbacks. To grant a variance based on the condition that the subject property has the bad fortune of actually being *subject* to Section 774.9(b) would seriously impair the intent, purpose and integrity of that section. In the future, any property owner subject to Section 774.9(b) could feel justified in presenting a variance request to build taller buildings with smaller rear yards, impacting neighboring properties. It is clear that the sole intent and purpose of Section 774.9(b) is to prevent that situation. To disregard that intent and purpose, particularly when a neighboring building stands to suffer serious harm as a result, would virtually erase Section 774.9(b), at least as it relates to large, potentially high-profit developments.

Approval on the basis of the size or shape of the lot would also impair the integrity of the Zoning Regulations. The Chevy Chase property is smaller than the Applicant's Property, and is very similar in shape. The Chevy Chase Building is currently six stories. If the Board approves this application, perhaps the Chevy Chase Building can also hope to receive variances to increase its height and density. Because the Applicant's alleged exceptional conditions are simply not exceptional at all, the standard for variance cases will be eroded by a Board approval here. As a result, the integrity of the Zoning Regulations would be significantly impaired.

III. Special Exception Relief for Roof Structures

The Office of Planning Report states that the rooftop structure on the proposed building will be 22 feet from the Chevy Chase Property. Under the Zoning Regulations, the rooftop structure is required to be over 45 feet from the Chevy Chase Property, a decrease of over fifty percent of the required distance. The proposed rooftop structure will be eighteen and a half feet high, along a forty foot stretch of the rear of the building, only six feet from the roof line. At a distance of only six feet from the roof line, an eighteen foot rooftop structure will effectively, from the view of the Chevy Chase Building, make this 130 foot building a 140-145 foot building. At a distance of only six feet, and a height of over eighteen feet, and a length of forty feet, the proposed rooftop structure will undoubtedly have an effect on the light and air of the Chevy Chase Building. The Special Exception is intended to provide relief when it can be done without impacting adjacent property owners. Such is not the case here, particularly when the rooftop provides a setback of almost thirty feet from the K Street roof line. The Special Exception should not be approved, as it will affect the light and air of the Chevy Chase Building, especially when combined with the proposed rear yard variance.

IV. Summary

The Applicant has not presented a unique condition of its property, and has not presented any practical difficulty justifying variance relief. Regardless of the Board's judgment of that legal criteria, the Board can not approve a variance, no matter the state of the proposed difficulty, if a neighboring property is adversely affected. Because of the weakness of the alleged exceptional conditions, the approval of a variance would impair

the intent, purpose and integrity of the Zone Plan. The Special Exception request must also be denied, as the provision of such a large roof structure so close to the roof line adjacent to the Chevy Chase Building will adversely impact the level of light and air to that building.

Respectfully submitted,

Martin P. Sullivan 1/13/03

Martin P. Sullivan

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