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September 22, 2003

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Hand Delivery

Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: BZA Application No. 17047
33 PST LLC

Dear Members of the Board:

At the conclusion of the public hearing held for the above-referenced application on September 9, 2003, the Board requested that the Applicant submit for the record a detailed parking management plan and evidence of lease arrangements for 100 parking spaces, as recommended by the Office of Planning in its report to the Board dated September 2, 2003. In response to the Board's request, on September 11, 2003, the Applicant filed with the Board a "Parking Management Plan" narrative, a site plan of the Applicant's property showing the stacking of twelve automobiles in the existing lot, and a "Survey of Current Existing Parking Spaces in Area." The survey is identical to the document previously submitted to the Board at Exhibit 41 with the exception that the caption of the document has been changed from "Parking Management Plan" to "Survey."

For all the reasons set forth below, 30/60 M Street Limited Partnership ("30/60 M") submits that the materials submitted by the Applicant fail to adequately address the stated concerns of the Board, the Office of Planning, and the parties in opposition. Therefore, 30/60 M maintains its opposition to the application and requests the Board deny Application No. 17047 for failure by the Applicant to satisfy its burden under §3103 of the Zoning Regulations, specifically as to causing no detriment to the public good and not impairing the intent of the Zone Plan.

BZA
Case No. 17047
Exhibit No. 67

Board of Zoning Adjustment
District of Columbia
CASE NO. 17047
EXHIBIT NO. 67

A. "Parking Management Plan"

In its September 2, 2003, report to the Board, the Office of Planning noted several deficiencies in the materials provided to that date by the Applicant. A number of those deficiencies remain unresolved by the Applicant in its Parking Management Plan. First and foremost, the Office of Planning noted that while the Applicant had submitted a list of owners/operators of parking lots in the area, including a summary of status of discussions between the Applicant and said owners/operators, there is no indication that leases have been signed with any of these owners. That apparently remains the case, as the Applicant still does not provide evidence of any leases and the owners of several of the properties on the list stated at the hearing that they were not amenable to leasing spaces for the Applicant's use.

The Applicant's proposal in paragraph (1) of its Parking Management Plan does not represent a satisfactory commitment from the Applicant to ensure no detriment to the public good. There, the Applicant states that it will provide evidence to the District of "contractual arrangements" for a minimum of 100 off-street parking spaces to be available for the exclusive use of patrons of the proposed nightclub within approximately 1,000 feet of the Applicant's building during all hours that the club is operating. However, the Applicant provides no mechanism tying any such agreements to the Board's approval, nor any remedy in the event that the parking arrangement is lost and can no longer be provided by the Applicant. In this regard, the Applicant's proposed condition for "contractual arrangements" is totally deficient.

30/60 M submits that if the Applicant is granted such a significant parking variance by the Board, it is not enough for the Applicant to enter into some form of an arrangement short of a lease with the owner of the property, whereby the Applicant might have a license or similar arrangement allowing it to pay for a certain number parking spaces only in the event said spaces are utilized by patrons or valets. If the Applicant cannot provide the required parking on-site, the Board should require the Applicant to demonstrate that, without exception, it is providing for the parking off-site for the period of time during which the use is in existence.

The Applicant has noted its proposed use of property on the north side of Patterson Street owned by Hanger Orthopedic Group. The Applicant has not demonstrated that forty parking spaces can actually be parked on that site absent significant use of public space for vehicle maneuvering. The Applicant's failure to submit leases or to agree to submit leases prior to final action by the Board has heightened the opposition's concern about the long term viability of the parking plan.

The Office of Planning has suggested that the Applicant incorporate the cost of providing this off-site parking into the admission fee of the club in order to ensure that patrons actually utilize the parking provided. While the Applicant did not respond to this suggestion, nor provide the anticipated cost to patrons for parking, as requested by the Office of Planning, 30/60 M strongly supports this recommendation from the Office of Planning, especially when the Applicant is attempting to provide the off-site parking as much as 1,000 to 1,500 feet away from the building (another proposal that 30/60 M submits is insufficient and inconsistent with the Zoning Regulations). If the Applicant is allowed by the Board to provide parking in a distant lot at significant cost to its patrons, there can be little doubt but that many patrons instead

will choose to utilize on-street parking, which is both less expensive and closer to the proposed nightclub.

On a related note, the Applicant has also not responded to the Office of Planning's request for information describing how patrons are to get from the off-site parking area(s) to the proposed nightclub if the patrons choose not to utilize the valet service. Similarly, the Applicant provides only the sketchiest of information regarding its valet system. No names or contact information of valet service contractors is provided. It would behoove the Applicant to provide as much information as possible in its Parking Management Plan in order to satisfy the Board that the public good will actually be protected were the Board to grant the variance application.

Finally, as discussed further below, 30/60 M takes issue with the Applicant's efforts with respect to parking provisions for its employees and patrons arriving while on-street parking restrictions are still in effect for the neighborhood. 30/60 M submits that the Applicant's stacking approach for its small parking lot is inappropriate and insufficient, because automobiles that are "stacked in" cannot be accessed without moving other vehicles onto public space. Should the Board approve the variance request, the Applicant should be required to ensure that its parking leases adequately provide for such early arrivals, including special events held at the proposed nightclub.

B. "Site Plan"

On page 3 of its Parking Management Plan, at paragraph 4, the Applicant makes reference to the stacking of up to twelve automobiles in the small parking area that exists on the Applicant's property. That parking area can accommodate a maximum of six parking spaces consistent with the dimension requirements for parking spaces established in the Zoning Regulations. Not only does the Applicant's proposal demonstrate the very reason that off-street parking it is required by the Zoning Regulations, the proposal is not permitted under the Regulations, particularly §2217.4, which provides that "each required parking space shall be accessible at all times directly from improved streets or alleys or shall be accessible from improved streets and alleys via graded and unobstructed private driveways that form an all-weather impervious surface."(emphasis added)

The Applicant's stacking plan is of particular concern to 30/60 M given the very close proximity of the existing driveway to the 30/60 M Property. The Applicant's stacked parking arrangement promises only to further exacerbate traffic and congestion along Patterson Street in front of both the Applicant's property and the 30/60 M Property, with valet parking, taxis, and pedestrian patrons competing with double-parked employees, patrons of other properties in the neighborhood and general through traffic.

C. "Survey of Current Existing Parking Spaces in Area"

Given the caption of this document, 30/60 M does not dispute the accuracy of the number of parking spaces existing in the area. However, as this document is identical to the document submitted previously by the Applicant with the caption "Parking Management Plan," 30/60 M disputes the accuracy of the document to the extent that it purports to represent spaces

available for the Applicant's use in order to comply with its obligations under Chapter 21 of the Zoning Regulations. First, 30/60 M reinforces its opposition to any reference in the document to on-street parking. The number of parking spaces available on-street is irrelevant in that the Applicant, just as every other building occupant, is required by the Zoning Regulations to provide Off-Street Parking. Furthermore, the Applicant's reliance on this number, including the notation that such on-street parking is free at night, is indicative of its intent to rely heavily upon these free spaces to provide parking for the proposed nightclub's patrons, instead of securing meaningful off-street parking leases . As set forth in 30/60 M's request for party status, the Applicant's monopolization of the street parking in the area works a significant detriment to all other property owner's in the vicinity, who also rely upon such street parking for casual users of their properties, over and above the required parking that each such property owner is required to provide.

Secondly, as identified at the public hearing, the Applicant has identified 312 parking spaces (414 if parked by valet) as available at 131 M Street, NE, and the subject of a letter of cooperation between the Applicant and Georgetown Parking Inc. As attested at the hearing by the representative of Union Station Venture/the Bristol Group, the owner of 131 M Street, NE, these spaces are not, and will not be, available for the Applicant's use, as the proposed nightclub use is inconsistent with the development plans for that property, and many others within the immediate vicinity of the Applicant's property.

Likewise, 30/60 M wishes to note for the record that the last entry on the Applicant's survey references numerous properties in the vicinity which can accommodate parking and which are owned by Capitol Square Management, LLC. As the Board will note, Capitol Square has been recognized by the Board as a party in opposition to the application and it is 30/60 M's understanding that no parking spaces will be provided by Capitol Square for the Applicant's use.

As a result, the Applicant's Survey is flawed and erroneous. The Survey significantly overstates the number of spaces available and does not address how those spaces would be guaranteed as long as the use continues.

D. Conclusion

For all these reasons, 30/60 M submits that the Applicant has not provided sufficient information, responsive to the requests of the Board and the Office of Planning, to meets its burden of proof that no detriment to the public good or to the zone plan will be caused by the grant of the requested parking variance. As such, Application No. 17047 should be denied. In this context, the lack of a viable and enforceable Parking Management Plan, the flawed parking Survey and the absence of lease agreements running contemporaneously with the certificate of occupancy and the Board's approval should be fatal to the application.

In the event that the Board finds certain merit in the variance application, 30/60 M requests that the Board condition any such approval of Application No. 17047 as follows:

(1) A minimum of 100 off-street parking spaces meeting the size and access requirements of the Regulations shall be made available off-site by the Applicant by means of written lease agreement(s) which include the owners of said property(ies);

(2) Said lease(s) is/are to be made part of the record before the Board and subject to review and comment by the parties, prior to the issuance of any order from the Board approving the variance application;

(3) The nightclub shall only be allowed to operate during hours for which parking is provided by lease arrangement;

(4) The Board's approval and any certificate(s) of occupancy issued for the proposed nightclub shall terminate with the expiration of the above-referenced lease agreement(s) [30/60 M recommends that both the approval of the variance and the C of O(s) be tied to the lease agreement to ensure that adequate scrutiny is given to the parking provisions]; and

(5) The parking spaces to be provided off-site shall not include any on-street parking and shall be located within 500 feet walking distance from the main entrance of the establishment. [While 30/60 M prefers the requirement that the spaces be provided within 500 feet so as to provide greater assurance that patrons choose to utilize the off-street parking provided by the Applicant rather than street parking, 30/60 M does not object to the Office of Planning's recommendation of 800 feet.]

Sincerely,

Norman M. Glasgow, Jr.

cc: Jay Hellman
Steve Gell
ANC 6C
Office of Planning

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