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January 5, 2004

VIA HAND DELIVERY

D.C. Board of Zoning Adjustment
Suite 220
441 4th Street, N.W.
Washington D.C. 20001

Re: BZA Application No. 17047 – 33 Patterson Street, S.E.
Motion for Reconsideration

Dear Members of the Board:

30/60 M Street Associates, L.P. ("30/60"), a party in opposition to the above-referenced application, hereby moves the Board of Zoning Adjustment to reconsider its decision in the application. The Board's decision is contained in an order dated December 23, 2003, served on counsel to 30/60 by mail. Pursuant to §§3126.2 and 3110.3 of 11 DCMR, this motion is timely filed as of this date.

The central issue in the proceeding before the Board was the Applicant's ability to provide a guaranteed supply of off-street parking spaces at the hours that the proposed entertainment night club would be open. The Board included conditions in the Order to address that issue, as follows:

"2. The reduction in on-site parking shall be permitted so long as a minimum of 100 off-site parking spaces are provided within 800 feet of the entertainment night club whenever the club is operating.

3. A certificate of occupancy shall not be issued for the entertainment night club unless the application for the certificate is accompanied by a binding written lease agreement(s) for a minimum of 100 off-site parking spaces within 800 feet of the property. The certificate of occupancy shall be revoked in the event the parking spaces are not provided as stated in this Decision and Order."

BZA
Case No. 17047
Exhibit No. 77

Board of Zoning Adjustment
District of Columbia
CASE NO. 17047
EXHIBIT NO. 77

However, the Board's determination to include that condition appears to be based on a factually incorrect statement in the order. In noting the report of the Office of Planning and the Applicant's response thereto, the Order states "By the time of the Board's decision meeting on October 7, 2003, the applicant had submitted evidence of a parking lease with a neighboring property owner."

As noted by 30/60 in its earlier filings with the Board, the letter submitted by the Applicant is from the DHCD Employee's Association, regarding Lots 256 and 846 in Square 672. The subject properties are listed in the records of the D.C. Office of Tax and Revenue as being owned by the District of Columbia, not the Association. Those two lots are also listed among the properties owned by the RLA Revitalization Corporation ("RLARC"). The letter gives no indication of what authority the Association may have to lease the spaces which it does not own, nor is there any indication that RLARC has consented to the terms of any such lease. Additionally, the letter is not a lease and the description of the lease indicates that it is for a term of only one year (while the Board's approval is for five years) which may be renewed under specified circumstances. The Board's statement that the Applicant had submitted evidence of a lease with an owner is clearly erroneous.

30/60 contends that this is not a minor point with respect to the Board's overall decision. The adequacy of the Applicant's commitment to provide parking necessary to ameliorate the impact of the proposed use is critical to the entire decision of the Board. Moreover, it appears that the Board's conditions are based on the presumption that the initial location of parking has already been determined. The implementation by the Department of Consumer and Regulatory Affairs of the conditions as written will be subject to substantial uncertainty: is the document already in the record upon which the Board relied sufficient to meet the condition, even though it is not a lease with the owner of the property?

The Board's Findings of Fact and Conclusions of Law regarding the adequacy of parking are erroneous because of the incomplete and inadequate factual basis in the record. The Board finds that parking spaces become available between 5:00 and 6:00 PM. The Board makes no finding as to whether those spaces would continue to be available for the duration of time that the club will operate, particularly in light of the changing conditions in the area, which the Board acknowledges.

For the reasons set forth above, 30/60 believes that the Board did not base its decision on reliable evidence in the record and that the Applicant has not satisfactorily

established that it can and will provide the parking which all agree must be provided. In that absence, the Board has erroneously concluded that the application meets the third part of the variance test, that granting the variance in the present set of facts and circumstances will not result in substantial detriment to the public good or the zone plan.

30/60 therefore moves the Board to reconsider the decision to grant the application with conditions as set forth in the Order dated December 23, 2003. Upon reconsideration, 30/60 urges the Board to deny the application unless and until the Applicant can provide on the record evidence of a binding lease with an owner of property that parking will be available within 800 feet of the subject property for all hours that the entertainment night club will be in operation.

Sincerely,

Holland & Knight LLP

Norman M. Glasgow, Jr.

Dennis R. Hughes

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2004, a copy of the 30/60 M Street Associates LP Motion for Reconsideration was served by mail on the following parties to BZA Application No. 17047:

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