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September 21, 2004

By Hand Delivery

Carol J. Mitten
Chair, District of Columbia Zoning Commission
441 4th Street, NW
Suite 210
Washington, DC 20001

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**Re: Case No. 04-18: Proposed Mount Vernon Triangle Subarea of the
Downtown Development ("DD") District – Impact on Development of
the Former Wax Museum Site**

Dear Ms. Mitten:

We are writing on behalf of Lowe Enterprises Real Estate Group – East, Inc., and its partners (collectively, "Lowe"), the developer selected by the National Capital Revitalization Corporation ("NCRC") to develop Square 515, Lot 158, at 5th and K Streets, N.W. (the "Subject Property"). This property is more commonly known as the old Wax Museum site. The Zoning Commission determined at its July 2004 meeting to set this proposal for hearing. No hearing date has been scheduled.

As acknowledged by the Commission at setdown, the proposed overlay is very complicated and confusing. Several provisions of the proposed overlay pose a serious impediment to the successful completion of the Wax Museum project. Other design provisions are perhaps theoretically achievable, were Lowe starting from scratch, but we must emphasize that the project design is currently well underway based upon NCRC's approvals. As discussed below, we have attached a detailed memorandum from the architect noting all of the various differences between the currently approved design and the provisions of the proposed overlay.

For the reasons provided herein, we respectfully request that the Zoning Commission, should it proceed with this overlay, specifically exempt the Wax Museum site from any of its provisions. We note that Section 170x.6(b) specifically exempts the Wax Museum site from the proposed height restriction because "[t]his square is already covered by the ERA [the Exclusive Right Agreement] for the disposition of the Wax Museum site." A similar logic should be applied to the remainder of the overlay restrictions.

**ZONING COMMISSION
District of Columbia**

CASE NO. 04-18
EXHIBIT NO. 7

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Background

The Wax Museum site has had a long, relatively rocky history. It has been vacant for many years. As testimony to the difficulty inherent in developing this property, the Wax Museum site has been the subject of three (3) different Requests for Proposals (RFPs) issued by the RLA Revitalization Corporation ("RLARC"), a subsidiary of NCRC, and its predecessors. The original two (2) selected developments did not proceed. The third RFP to develop the site was issued on July 7, 2003. After numerous submissions and presentations, Lowe was selected on February 26, 2004. (Press Release attached as Exhibit A). NCRC and Lowe have subsequently executed an Exclusive Rights Agreement ("ERA") which is currently in effect and governs the development of the Subject Property.

Review of Proposed Overlay and Impacts on Wax Museum Redevelopment

The proposed overlay places the corner of the Wax Museum site at 5th and K Streets, N.W., within "The Special Entertainment Use Area" (Section 170x.15). The Special Entertainment Use Area would establish restrictive use provisions for the ground floor of the development. A large portion of the site frontage on 5th and K Streets is also located within the "Primary Use Area." Even though the Special Entertainment Use Area appears to be limited to an area 36 feet to the east and north of the intersection of 5th and K Streets, the Office of Planning has taken the position that once any part of the building is subject to the overlay, then those restrictive use provisions apply to the entire ground floor. This interpretation needs to be clarified, as does its effect on the Wax Museum project.

Certain use restrictions (Section 170x.12) apply from the effective date of the proposed District so that only Section 170x.23 and 170x.24 uses may be established. More troubling, the so-called "trigger point" for the most preferred use provisions is five (5) years after the Zoning Administrator¹ certifies that 3.5 million gross square feet of new space has been occupied within the defined Mount Vernon Triangle area and publishes a notice in the D.C. Register. At that point, permitted uses only include

¹ We do not address the capacity of the Zoning Administrator to certify the 3.5 million trigger, but we do note the ongoing issues with respect to similar use restrictions on the amount of restaurants in Cleveland Park and elsewhere.

restaurant, bookstore (including restaurant), cabarets, and drinking place (Section 170x.20 and 170x.25). Special exception relief for one five-year extension period only is provided in Section 170x.22.

From a practical standpoint, the impacts on leasing the Wax Museum ground floor created by the proposed overlay are two-fold. In an undeveloped market such as the area where the Wax Museum site is located, any restrictions on the type of use for the ground floor are problematic. This is particularly true for the Wax Museum project. It is intended to be a catalyst for future development in the area, and the project is already subject to numerous use and development restrictions imposed as part of the RFP process. In fact, the Mount Vernon Triangle Action Agenda (October 2003) which is referenced by the Office of Planning in its Report states that “[T]he commitment to the Wax Museum Site Request for Proposals, an NCRC initiative, demonstrates the City’s intent to shape the character of the neighborhood, with a program of our 500 housing units, along with encouraging the inclusion of artists live/work studios, a grocery store, retail and restaurants and a local arts venue. With this project [Wax Museum], the City intends to catalyze the creation of a neighborhood core as well as to support other new development in the Triangle. The Wax Museum site redevelopment will set the bar high for surrounding development with quality architectural design and construction of an abundance of local amenities” (at 6). (emphasis supplied). Further, the Office of Planning report on the proposed overlay states with respect to the Wax Museum site redevelopment, that: “The National Capital Revitalization Corporation’s (NCRC’s) request for development proposals for the re-use of this site suggested that respondents place special emphasis on the uses, design treatment, and openings at the corner of 5th and K. The winning proposal responded positively to this suggestion. NCRC and OP are working to help refine design and use details for this corner” (at 7) (emphasis supplied). If these statements are true, why are additional restrictions, particularly on design and use, being proposed?

Further, the trigger provisions, while providing an indefinite phase-in period theoretically to let the area mature, are not practicable in the real world. The trigger is five (5) years after the Zoning Administrator certifies that 3.5 million square feet have been occupied in the Mount Vernon area. In addition to issues of providing effective notice to all owners and tenants after the trigger has been pulled (the Zoning Administrator is to publish a notice in the (D.C. Register)), the end trigger date is not ascertainable in advance and therefore cannot be predicted at the time of entering a lease. The time frame is the most basic aspect of a lease. Tenants, owners and lenders require certainty in leases and in the financing structure. Why would tenants, and owners invest the costs, time and energy to build out a space and market the use if the tenant who takes the space will be required to vacate at a future unspecified date? How will owners be

able to lease the ground floor to a non-preferred user with no certainty as to how long such tenant will be entitled to stay?

For instance, under the proposed regulations, an owner could lease the entire building, including the ground floor to a law firm, a permitted use under Section 170x.24. However, the lease for that ground floor would have to be indeterminate in term because of the unknown trigger date. No law firm would be willing to lease the space under such conditions. There are even more severe impacts on residential uses. The Wax Museum project has a ground floor lobby for residential use located beyond the 36-foot Special Entertainment Use Area. Residential lobbies are permitted by Section 170x.23. However, under the Office of Planning's interpretation that the stringent provisions of the Special Entertainment Area apply to the entire ground floor, such residential lobby would not be allowed once the trigger provisions kick in.

Unfortunately, we believe that the more likely impact of the trigger provisions will be that no non-preferred user will sign a lease because of the indeterminate time frame. And because the area is certainly not attractive at this time to the type of tenants that the Office of Planning is seeking, the ground floor is most likely to remain vacant, thus bringing no change to the character of the area.

Finally, and most fundamentally, because of the unique nature of the Wax Museum project, its history and importance to the City, and the complexity of the deal with RLARC, the Wax Museum site should be completely exempt from the overlay. For instance, the Wax Museum project was required to have a grocery store. There is currently a lease commitment from Safeway; however, a grocery store is not a preferred use under Section 170x.25.

Design Issues

In addition to requirements related to display windows and entrances (§ 170x.6(b)), the ground floor must measure a ceiling height of at least 14 feet clear for a depth of 36 feet from the ground floor's front building line. In addition, the 36-foot by 36-foot portion of the building at the corner of 5th and K is required to have 22-foot ceilings (§170x.6(c)). Further, the 36-foot by 36-foot portion of the building to the north and east of the intersection must have at least 50 percent of the ground floor with 22-foot clear ceiling height.

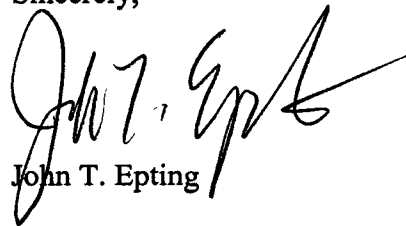
Implications on the Wax Museum's Current Design

Attached is a memorandum dated September 7, 2004, from the project architects (Torti Gallas and Partners • CHK) which details the impacts of the proposal on the project's current design. (See Exhibit B). These differences and impacts between the current design and the overlay proposal include: ceiling heights and location of high ceiling areas of the building; size and orientation of the space at the 5th and K Streets intersection, driveway/private alley location; the impact on direct lobby entrances within 72-feet of the intersection affects the secondary entry to Safeway, and retail parking and mezzanine retail; and the need for exit stair discharges, lobbies and secondary entrances.

Conclusion

Redevelopment of the Wax Museum site has been a long, sometimes bumpy road, and it is far from complete. Lowe and the NCRC have devoted an extraordinary amount of time and expense finally to make this project happen and bring new life and vitality to the Mt. Vernon Triangle area. Superimposing additional, often conflicting use restrictions (with controversial phase-in trigger provisions for more restrictive uses) and design is inconsistent with NCRC's and the City's goals for developing this site and needlessly complicates an already complex and complicated project. We therefore respectfully request, if these provisions are to be adopted, that the Wax Museum site be exempt.

Sincerely,



John T. Epting

cc: Marc Dubick
Eileen Circo
Lisa Wiersma