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11 June 2012

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District of Columbia Zoning Commission
441 Fourth Street, NW Suite 200 South
Washington, DC 20001

*Re: Z.C. Case No. 11-03, Harbour
Square request for minor modification*

Dear Members of the Commission:

The Applicant's opposition to Harbour Square's request for minor modification seems not to grasp the concept of "newly discovered evidence" that could have been – but was not – presented to the Commission before issuing the Stage One decision in this case. Prior to that decision, the District of Columbia government learned that two federal agencies had serious environmental concerns about locating townhouses on Pier 4. Because Pier 4 issues will not be fully resolved until several years from now, Harbour Square's request simply asks the Commission to keep open the issue of location of these townhouses until such time as these and related issues can be fleshed out.¹

In opposing the request, the Applicant argues first that the modification is not minor because it would purportedly "overturn" the Commission's determination as to the location of Pier 4. The Applicant then argues that the environmental issues raised by these agencies can be addressed at a future date. There is an inconsistency here. What good will environmental review do if Order No. 11-03 means that the choice turns out to be building townhouses only on Pier 4 – or not built at all? Would it not make more sense to treat Order No. 11-03 as more of a provisional approval of the Pier 4 location at this time, based on facts that are currently known? The Applicant's preference for "verdict first, evidence later" is hardly a sound approach to urban planning on an important project such as the Southwest Waterfront redevelopment.

The Applicant's procedural objections contest the applicability of the minor

¹ We regret the late filing of this reply, but the Applicant's opposition is defective because it was not served by mail on counsel for Harbour Square until 6 June 2012, not 16 May 2012, as stated in the Applicant's certificate of service. The copy sent in May was sent to the undersigned's former office and was not forwarded, even though Applicant's counsel had acknowledged several months ago the change of address. Thus Harbour Square first learned of the existence of this opposition only two days ago.


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modification rule to this situation and note that our request is really in the nature of an untimely motion for reconsideration. These objections simply underscore the fact that no rule explicitly states how address pertinent evidence that existed prior to the Commission's decision and that a neighborhood group had no way of knowing about until the evidence surfaced unexpectedly in response to an FOIA request.

Harbour Square is more than willing to have its request considered under whatever rubric the Commission may deem most appropriate -- if not as a request for minor medication, then as a request for reconsideration accompanied by a request for leave to file out of time, or as a motion to reopen the record in light of newly discovered evidence -- which has no time limit. The Applicant has responded to all concerns. What should matter here is the substance and the importance of good urban planning.

For these reasons, Harbour Square respectfully asks the Commission to grant relief and to amend paragraph A.1 of the Decision part of the Order to add: "This decision is without prejudice to an affected party's ability to raise questions about the location of development on Pier 4 when the applicant submits a second-stage application as to that site."

Respectfully submitted,



Cornish F. Hitchcock
Attorney for Harbour Square Owners, Inc.

CERTIFICATE OF SERVICE

I hereby certify that copies of this motion were served by first class mail, postage prepaid, this 11th day of June, 2012 upon the following:

Norman Glasgow, Esq., Mary Carolyn Brown, Esq., Holland & Knight, LLP, 2099 Pennsylvania Avenue, N.W. #100, Washington, D.C. 20006 (and by e-mail); ANC 6D, 1101 4th Street, S.W., Suite W 130, Washington, D.C. 20024; Office of Planning, 1100 4th Street, S.W., Washington, D.C. 20024; Mr. Martin Parker, DDOT, 1100 4th Street, S.W., Washington, D.C. 20024; Jacques DePuy, Esq., Kate Olson, Esq., Greenstein, DeLorme, Luchs, 1620 L Street, N.W. #900, Washington, DC 20036; Gangplank Marina Slip-holders Assoc., 600 Water Street, S.W., NBU 5-3, Washington, D.C. 20024, Attn: Jason Kopp; 6th Street Homeowners Assoc., c/o Leslie Randolph, 462 M Street, S.W. Washington, D.C. 20024; and by hand upon Tiber Island Cooperative Homes through undersigned counsel.

