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January 18, 2010

Via Messenger

Mr. Ronald D. Leonhardt
City Clerk
City of Milwaukee
200 East Wells Street, Room 205
Milwaukee, WI 53202

Dear Mr. Leonhardt:

Re: Zoning & Neighborhood Development
("ZND") hearing on January 13, 2011

In anticipation of the meeting of the Common Council on Wednesday, January 19, 2011, we would like to make this letter part of the file shared with the Common Council. This letter is submitted on behalf of Wave Development LLC (the "Applicant"). This letter will address the fact that the Applicant met the standard for appeal at the January 13, 2011 hearing of the ZND and it reiterates our concern that the Motion adopted by the Historical Preservation Commission ("HPC") may need to be clarified.

I. Appeal of HPC's Approval with Conditions.

Pursuant to a letter dated January 11, 2011, we filed an appeal on behalf of the Applicant to the HPC's conditional approval of the Application ("Application") for Certificate of Appropriateness ("COA") to build a new building on the property, as described in the Application. Generally stated, the condition imposed by the HPC is that the building must be set-back 15 feet from the property line. Pursuant to the Milwaukee Code of Ordinances Section 320-21-11-f (the "Ordinance") an appellant must establish that "failure to grant the certificate of appropriateness [or the issuance of the COA with a condition] will preclude any and all reasonable use of the property or will cause serious hardship for the owner, provided that any self-created hardship shall not be a basis for reversal of the modification of the commission's

decision.” At the January 13, 2011 ZND hearing, the Applicant clearly established that the 15 foot set-back requirement imposed by HPC would create a serious hardship for the Applicant.

Among other evidence provided by the Applicant at the hearing, the following are the most pertinent arguments presented by the Applicant:

1. Increased Construction Cost. At the ZND hearing both the architect for the project and the builder for the project testified that imposing the 15 foot set-back would significantly increase the construction cost of the Project. In order to accommodate the 15 foot set-back, two stories would be added to the building which would significantly increase the construction costs. The Applicant’s managing partner testified that the project would not be economically feasible if these additional costs were added to the project. The opponents did not provide any evidence that the set-back would not increase the construction costs.

2. Removal of the Junior Ballroom. The Applicant’s architect testified that imposing the 15 foot set-back would cause the removal of the Junior Ballroom from the hotel. The managing partner of the Applicant as well as the architect for the project testified that the Junior Ballroom is an important source of revenue for the project and without the Junior Ballroom, the project is not economically feasible. The opponents of the project did not provide any evidence that the project would be viable without the Junior Ballroom.

3. Set-Back is Inconsistent with District Guidelines. The Applicant established that no other properties in the downtown district are set-back in the manner that HPC recommended that this project be set-back. In addition, the architect for the project testified that there is not a requirement in the Downtown Plan or any other building guidelines applicable to the project that require the project to be set-back. It is likely illegal and is certainly unfair to impose a set-back requirement on this project when similar set-back requirements are not imposed on other projects.

If your office or the Common Council would like any further discussion on how the set-back requirements creates a serious hardship for the project, we will be willing to provide further evidence of this fact.

II. HPC Motion Regarding Set-Back.

In your letter dated January 11, 2011 you state that at the public hearing held by the HPC on January 10, 2011, HPC granted the Applicant’s request to build a new building on the property with the “condition that a set-back for the new improvement is established at a

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minimum of 15 feet from the datum of the McKeough Building.” At the hearing on January 13, 2011, David Uihlein testified that HPC granted the Applicant’s request to build a new building with the condition that the building be set-back 15 feet from the top of the fourth floor window of the McKeough Building. Mr Uihlein testified that the top of the fourth floor window of the McKeough Building is the “datum line.”

We believe the discussion and intent of HPC at the January 10, 2011 hearing was that the upper three floors of the project should be set-back from the property line. If the Common Council grants our appeal to the imposition of the 15 foot set-back requirement, then this issue is moot. If the Common Council does not grant our request to remove the 15 foot set-back requirement, then we request that the portion of the building to be set-back be clarified so it is consistent with the motion adopted by HPC on January 10, 2011.

Please contact me with any questions or comments with respect to this letter. We look forward to the Common Council meeting on January 19, 2011.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. DeMuth', enclosed within a large, loopy oval shape.

Thomas P. DeMuth

Cc: Mr. Jim Owczarski (via Messenger)
Mr. Gregg C. Hagopian (via Messenger)