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*Penny St. Louis Littell- Director of Planning and Development
Marge Schmuckal, Zoning Administrator*

TO: CHAIR AND ZONING BOARD OF APPEALS

FROM: MARGE SCHMUCKAL, ZONING ADMINISTRATOR

SUBJECT: 38 INDIA STREET – 29-L-001 – B-3/ CONDITIONAL CONTRACT ZONE

DATE: JANUARY 29, 2009

This property is wholly within a B-3 Downtown Business Zone. There is also a conditional contract zone #C44 that affects the site which would allow a specific development for a hotel, residential condominium units with restaurants, bars and retail commercial space as well as underground parking. Prior to development, the property is governed by the zoning provisions, as such may be amended from time to time, applicable in the underlying B-3 Zone.

The B-3 zone lists “parking garages” and not “surface parking” under permitted uses, section 14-217. “Surface parking” is specifically listed under conditional uses that go to the Planning Board, section 14-218(b)(5), for approval. The City Council approved the addition of this section of the ordinance to the B-3 on June 4, 2007. According to City Councilor Kevin Donoghue, this particular site was one of the parcels for case studies when the amendment was discussed and approved.

This variance appeal is before the Zoning Board of Appeals because the appellant requests a variance of the required setback of thirty-five (35) feet from any street line. The appellant has submitted plans showing that the allowed permitted use for surface parking can be met for ninety-nine (99) parking spaces. However, the appellant can fit 174 surface parking spaces within the lot if the thirty-five foot setback variance is granted. There are varying amounts of setbacks. The closest setback is shown at 6 feet. The next step would be for the Planning Board to hear the conditional use appeal after the decision of the Zoning Board.

Please note that under section 14- 473(c)(4)(d), “Specific Variances Prohibited” it states that, “No variance shall be granted which would be greater than the minimum variance necessary to relieve the undue hardship or the hardship of the applicant.” I believe part of the Board’s responsibility is to determine that the final proposal is the minimum variance necessary to meet all the criteria necessary to be met under State and City requirements.

It is also my understanding that the Zoning Board of Appeal's role is to interpret the Zoning Ordinance as it is written. There is also a responsibility to properly interpret the practical difficulty requirements as written. Generally speaking, a severe economic downturn would not normally affect the Board's decision unless the practical difficulty requirements can be interpreted to apply. The responsibility for final policy decisions as it relates to ordinance requirements, belong solely with the City Council. It would be the City Council's responsibility to amend the City's ordinances if it was felt that the current requirements were too harsh during economic down times.