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January 31, 2008

Kirkland Planning Department
Kirkland City Council
123 Fifth Avenue
Kirkland, WA 98033-6189

Appeal of the decision of the Kirkland Design Review Board (DRB) to approve Bank of America Mixed Use Project under Permit No. DRC07-00006, for property located at 101 Kirkland Ave.

1. DECISION APPEALED. The appellant designated below hereby appeals the decision of the Kirkland Design Review Board (DRB) to approve the Bank of America Mixed Use Project under Permit No. DRC07-00006, for property located at 101 Kirkland Ave. That project will be referenced herein as the "BOA Project." This decision is dated January 17, 2008, a copy of which is attached and will be referenced as the "DRB Decision." This appeal is brought pursuant to §142.40 of the Kirkland Zoning Code ("KZC"), Appeals of Design Review Board Decisions, and requests review and decision by the City Council.

2. IDENTITY OF APPELLANT. This appeal is brought by Citizens for a Vibrant Kirkland, "CIViK." CIViK is a local citizens organization and a Washington nonprofit corporation consisting of residents, business owners and other interested persons concerned with the economic, environmental and civic development of downtown Kirkland. The address of CIViK is:

CIViK
218 Main Street
PMB 675
Kirkland, WA 98033

CIViK and its members provided written and oral comments on the BOA Project before the DRB.

CiViK is represented in this matter by J. Richard Aramburu, whose address is:

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3. ISSUES ON APPEAL. The DRB Decision was in error and should be reversed for the following reasons:

3.1 State Environmental Policy Act. The DRB erred in reviewing, considering and issuing discretionary approval for the BOA Project in violation of SEPA, for the reasons stated in the letter sent to the DRB dated January 2, 2008 and attached hereto. Also, the checklist did not accurately describe the proposal, including, but not limited to the addition of an additional parking floor as a part of the proposal before the DRB.

3.2 Buildings Limited to Two Stories along Lake Street. Under the Downtown Plan, buildings should be limited to two stories along all of Lake Street. The DRB erred in permitting more than two stories for this building located on Lake Street.

3.3 Exercise of Discretion. The DRB erred in limiting its exercise of discretion to consideration only of the design elements of the third and fourth stories and erred in its understanding and determining that it lacks discretion to disapprove any new construction over two stories up to four stories.

3.4 Downtown Plan. The DRB approval was inconsistent with the terms of the "Downtown Plan" as required by the KZC section 50.10. The BOA Project applicant does not provide justification to increase the height of the proposal over the two floors permitted in underlying zoning. Such inconsistencies, include, but are not limited to, the failure of those stories above the second story to be set back significantly from the street, the failure of the building to step back at those floors above the second floor, the

failure of the proposal to reduce building mass above the second floor, the failure of this building to contribute to a mix of two to four story in Design District 1B and the failure of the proposed structure to step up from the north and west to the base of the bluff.

3.5 Parking Modification. The DRB erred in approving the parking modification that reduced the number of required parking stalls for the project from 1.7 stalls per unit to 1 stall per bedroom. There is insufficient evidence that the occupants of the residential units will have significantly less vehicles that support reduced parking demand. The DRB further erred in not evaluating the adequacy of the applicant's proposed guest parking at .15 per unit whereas KZC 105.20 would allow the DRB to have required as much as .5 spaces per unit. Further, there are no covenants or written commitments limiting the use of this property to senior housing or limiting occupants to individuals or families that have only as many vehicles as they have bedrooms.

3.6 Bank as Retail Use. The DRB erred in concluding that banks, such as the proposed Bank of America, are retail uses on page 8 (first line) of its decision. Pursuant to KZC 50.12.020 and .030 "banking and related financial institutions" are listed as different uses, with different requirements, than "retail establishments."

3.7 Lack of Binding Commitments for DRB Conditions. The DRB erred in not requiring that the various features, conditions and uses described in its decision be made binding on the applicant through conditions and restrictions of title on the property. This applies especially to the limitation on units based upon the parking modifications, the failure to assure that the proposed café be retained and that retail uses shall be maintained.

3.8 Unconstitutionally Vague Standard. The DRB made its decision based on its conclusion that the BOA Project met a standard for "superior retail." The term "superior retail" is too vague to set forth uniform guidelines so that its interpretation is not left solely to the discretion of administrative bodies or officials and thus cannot be considered a criteria to allow additional height. See *Anderson v. Issaquah*, 70 Wn. App. 64, 79, 851 P.2d 744 (1993); *Indian Trail Property Owner's Ass'n v. City of Spokane*, 76 Wn. App. 430, 437, 886 P.2d 209 (1994); *Burien Bark Supply v. King Cy.*, 106 Wn. 2d 868, 725 P.2d 994 (1986).

3.9 Application of Superior Retail Criteria. The DRB erred in interpreting the "superior retail" criteria to be applied to the physical

configuration of the retail space instead of the use to which the space will be put.

3.10 Superior Retail. Even if "superior retail" is a legally permissible standard and can be applied to a physical configuration, the known anchor tenant and the small retail spaces found in the BOA Project do not constitute "superior retail." As such, at least the fifth floor of the proposal should be eliminated.

3.11 Drive-through Feature. The DRB erred in approving the drive through feature of the BOA Project as it is inconsistent with the downtown plan and will result in threats to pedestrian safety.

4. RELIEF REQUESTED.

Based on the foregoing, the CIVIK requests that the City Council reverse the decision of the DRB, or in the alternative remand the matter to the DRB for further proceedings.

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Encl.

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