

December 8, 2013

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Dear Chairman Jordan and Members of the Board of Zoning Adjustment:

My name is Paul Mesterhazy, and I reside at 1515 15th Street NW, #430, immediately across the alley from the proposed development under BZA case #18638. I have submitted two previous letters of opposition for this project (exhibits 30 and 32), and had planned on being present for the December 10, 2013 hearing on this case. Unfortunately, however, I cannot be present in front of the Board due to a serious medical condition. As I recognize the record to the case remains open, I am submitting this written testimony in lieu of my ability to personally present my arguments against case #18638. As I have provided significant written opposition in my previous letters, the below summarizes my overall opposition, but offers a few additional points. Thank you for your consideration of my arguments.

1. No outreach by the applicant until opposition occurred

While the applicant has actively pursued approvals from the ANC and HPRB since spring, **the applicant made no outreach effort to the residences of The Metropole** until the Board representing the residential units of The Metropole submitted its application for party status to the BZA.

2. No outreach by public agencies to discover issues

To date, no ANC representative, representative of the District's Office of Planning, or representative of the District Department of Transportation (DDOT) has contacted the Board representing the residential units of The Metropole or made any effort to discuss the project with residents or the commercial establishments of The Metropole.

3. No analysis on the existing congestion of the alley or the project's potential negative impacts on the alley

The subject property sits at a dead-end of a small (10-foot) alley that services one of the most densely populated squares in the District (by residential density) and that also services multiple, busy and successful businesses on the square. The alley, throughout the day, is congested with delivery vehicles, garbage trucks, vehicles trying to access the owned residential parking along the alley, and vehicles trying to access the public parking garage within The Metropole (which is often full), requiring vehicles to turn around at the dead-end point of the alley. The alley is often so congested that delivery vehicles and garbage trucks will double park on P Street or 15th Street and use the access easement (the breezeway) on The Metropole property to bring deliveries of move garbage bins between the alley and P and 15th Streets. Yet the applicant has provided no loading area on their site, or any sort of delivery management plan. Without these in place, and without any proposed parking for the residents, one can assume that residents of the proposal will add to the congestion of the alley.

Moreover, as the proposed development includes 38 rental "micro-units" one can assume that there will be significant turnover in residents. In fact, unless the applicant can prove otherwise, it should be assumed that residents only stay to fulfill one-year leases before moving on. With this as the case, it can be expected that there could be 38 move-outs and another 38 move-ins (for a total of 76 move-ins and move-outs per year, or one move-in or out every 4-5 days). How will these be managed? The applicant has provided no

Case # 18638

Mesterhazy letter in opposition

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plan. Further, if residents do not have cars, then it can reasonably be assumed that deliveries are increased. Where will these deliveries be done - the alley or by blocking the only through-lane on Church Street? The applicant has provided no plan.

In addition, there was no analysis done by DDOT that looks at the current congestion of the alley and how the proposal may intensify the problems associated with the alley congestion. The Board, at a minimum, should expect this analysis to have been completed by DDOT; otherwise, why does the Board request a report from DDOT?

4. The parking requirement not only provides for parking demand, it also works to ensure developments are not overly dense for their sites

One of the primary purposes of a zoning code is to ensure that developments are not nuisances to neighboring properties. This is done through development requirements and restrictions. For a residential project within the C-3-A zone in the District, to ensure that a development does not become a nuisance to neighboring properties, the zoning code requires one (1) parking space for every two (2) residential units. This parking requirement does two things: first, the requirement ensures sufficient parking is built to meet the demand of those residences that have a need for automobile parking when the use of alternate modes of transportation (transit, biking, walking) are not desired; and second, the requirement works together with other size and massing restrictions within the code to ensure that a development is not too dense for a site.

On the first point, the applicant has provided no support for its argument that its proposed 38 units will not have any demand for parking. The subject application for zoning relief provides no transportation assessment for the proposal. The applicant, at a minimum, should have provided—in advance of the originally scheduled October 22 hearing: 1) an inventory of non-automobile transportation options near the site, 2) an analysis of the proposed trip generation for the proposed project, 3) a parking assessment (including schematics of potential parking configurations and associated costs to show the board any practical difficulties), and 4) a proposed transportation demand management plan. **The applicant has provided none of these materials.** Further, these materials should have been scoped at the outset with the DDOT and there is no indication within the application, including the DDOT report, that any conversation occurred between the applicant and DDOT to scope these materials. The Board should question why these materials were not provided to support the application.

On the second point, the parking requirement should be considered in combination with other zoning restrictions (height, FAR, setbacks, lot occupancy, etc.) to ensure that a development is not too dense for a site. Currently the subject property (the three townhouse lots combined) contains three (3) parking spaces which are off the alley. Without changing any number of parking spaces or the current configuration of the existing parking spaces, the property could accommodate six (6) units as a matter-of-right. With some modification, the property's 38-foot width can accommodate four (4) parking spaces off the alley, which would allow eight (8) matter-of-right units to be built. **While the applicant is allowed to construct their desired 38 units within the C-3-A zone, these are not matter-of-right units without the provision of the required parking.**

The resultant density of the applicant's current proposal is 1 unit per 90 sq. ft. of lot area (lot size 3,420 sq. ft. / 38 units = 90 sq. ft. of lot per unit). This density is 2.5 times the density of the adjacent built condominium, which has 1 unit per 242 sq. ft. of lot area (lot size 6,525 sq. ft. / 27 units = 242 sq. ft. of lot per unit).

By basing the matter-of-right number of units, in part, on the provision of required parking, the zoning code ensures that development proposals are not too dense for their sites. The applicant has made no case and provided no evidence as to why their proposed density is in line with the density other developments on the square, or why their proposed density will not be a nuisance to the adjacent residents.

5. The applicant has not demonstrated that the subject property meets the first prong of the variance test

The subject property is a regular rectangle and larger than a number of other properties on the square (that, under the same zone, have successful uses). The subject property also has typical street and alley access, like all other lots on the square. The applicant proposes to only retain the front facades and portions of the side walls of the three existing townhouses. The applicant proposes to excavate underneath the townhouses to create new basement space, construct new floors, and build above the few wall remnants of the existing townhouses. As only remnants of the existing townhouses will remain, the existing structures do not create an exceptional situation or condition. As such, the subject property does not have any exceptional narrowness, shallowness, or shape or an exceptional topographical condition or other extraordinary or exceptional situation or condition that allows the Board to find that the application meets the first prong of the variance test.

6. The applicant has not demonstrated that the subject property meets the second prong of the variance test

The subject property has three existing townhouses that have been used as single-family homes for approximately 120 years. One remains occupied, while the other two were recently vacated following sales last spring. Single-family townhouses are an allowable use within the C-3-A zone. The C-3-A zone allows a significant number of residential and commercial uses. The applicant has failed to provide any evidence (market study, etc.) to prove that there is a practical difficulty in redeveloping the subject property in accordance with the requirements of the C-3-A zone. **The applicant's desire, not requirement, to construct 38 units at the subject property results in the applicant's inability to provide the required 19 parking spaces.** The applicant has provided no analysis to show that the use of the existing townhouses as single-family homes is a practical difficulty, or that other matter-of-right uses (that do not need variance relief) are impractical. In fact, the square has a number of lots that are significantly smaller than the subject property but that have very successful commercial establishments operating in accordance with the requirements of the C-3-A zone.

7. The applicant's proposal does significant harm to the public good and thus does not meet the third prong of the variance test (nor does it not impact the public good as required for the applicant's requested special exceptions.)

As noted in the numerous letters of opposition on file, the applicant's proposal has the potential to significantly negatively impact a large number of owner-occupied residential units. In fact, The Metropole condominium contains approximately 50 units that front onto the alley and face the subject site directly. The proposal's 38 apartment units have the potential to significantly negatively affect the light and air and well being of The Metropole residents and, to probably a great effect, the value of all 90-plus condominiums within the building. (If each condominium within The Metropole lost a reasonable average of \$50,000 in property value due to the loss of light and air and other negative impacts of the proposal, there would be a collective loss of approximately \$4.5 million in property values. However, it should be

noted that many of The Metropole owners would support redevelopment of the subject property with a use that conforms to the zoning requirements and that would sustain and improve our property values.)

Of course, the lack of required parking and congestion in the alley are primary concerns of The Metropole residents. However, many residences will be negatively impacted by the large, blank 85+-foot blank wall that forms the proposals' west façade. The applicant has failed to show any shade studies, but one can assume by the configuration of the proposed building that this wall will completely block all sun, wind, and weather from many condominiums. Likewise, the proposed building, by not allowing any sun or weather from reaching the ground will probably kill most plants within the Metropole's courtyard (or backyard), which is the only outdoor space within the condominium that all residences enjoy.

Other condominium residences that face north will be facing the south façade of the proposed building, which is planned to be all glass. Currently, The Metropole residential units that face north are subject to intense glare from the southern facing windows on the existing condominium that fronts on Church and backs onto the alley. This glare, especially during the summer, causes significant heat gain within units of the Metropole and often requires the shades—on our north facing windows—to be drawn during the day. This doesn't even account for the fact that an additional approximately 20 units will be looking directly into my living room and bedrooms. The proposed building will only exacerbate these issues, and yet, neither the applicant, the ANC, nor the Office of Planning have bothered to even inquire of The Metropole residents if there will be any negative impact from the proposal.

Furthermore, the alley, which is heavily developed, has the effect of echoing any sound made within it. The Metropole residents have significant concerns regarding potential noise from the proposal's rooftop deck. The proposal, which consists entirely of for-rent micro-units will tend to attract single, young tenants. Amplified sound, late at night, from the rooftop deck can often be the effect of younger tenants and has the potential to seriously echo through the alley and negatively impact the lives of others. The rooftop deck should not be allowed. (Please also note that while the applicant claims the proposed rooftop deck is a necessary amenity to provide outdoor space, the proposed building has the potential to kill all plants and make unusable The Metropole's courtyard—the only outdoor space that is available to all its residents.)

8. It is unclear that the applicant's proposal meets the Green Area Ratio requirements

I understand that new regulations are in place (effective October 1, 2013) that require new developments to meet the requirements of the Green Area Ratio. Although I've tried to study the new regulations, as a layperson these requirements are difficult to fully comprehend without much more research, so I do not understand how the applicant's proposal meets these requirements. As the subject property, along with The Metropole's courtyard, are the only green spaces with pervious surfaces within the alley—or the square as a whole, I have serious concern that the proposal removes green space and impervious surface, and will contribute to stormwater runoff within the alley. As this is a new regulation, the Board should have both the applicant and the Office of Planning explain how this project does meet the Green Area Ratio requirements.

9. The applicant's proposal will set a bad precedent for further redevelopment of lots in the C-3-A/ARTS zone

Over the past few years, the Board has approved a number of development proposals within the C-3-A/ARTS zone. These projects have been a mix of all residential, all commercial, or mixed-use (residential/commercial) and they have needed a variety of variances and special exceptions. All of these

projects have been able to prove some uniqueness of their site or their site's condition, and some sort of practical difficulty. This applicant has done neither, and I encourage the Board to do what I have done and review the materials provided in the other applications in comparison to this one. This application falls far short of what should be expected.

The applicant's only claim of uniqueness is that the subject site is small and that they must respect existing historic resources. However, the subject site is larger than many sites on the same square and across Church Street, and throughout most of the ARTS overlay district. In addition, the applicant is preserving only very small portions of the walls of the existing structures. This is done throughout the District and hardly constitutes a unique condition. The applicant has also provided no market analysis or other proof that any practical difficulty exists to develop the property. The applicant's only difficulty is providing the 19 required parking spaces for the 38 units it desires to build.

The applicant has provided no proof that the proposal will not harm the public good or that it does not go against the intent of the zoning ordinance. The applicant has provided no transportation demand study or proof that not providing the required 19 parking spaces for its desired 38 units will not negatively impact the public good. The applicant has only provided a promise, of which enforcement is questionable, that it will not allow tenants to obtain a District parking permit. Likewise, the applicant offers no management plan for the building, including its loading and use of proposed open space (parking area proposed behind building and the rooftop deck), nor has the applicant provided shade studies, or any other proof that constructing an 85+-foot blank foot wall or a solid 70' south facing wall of glass will not negatively impact the light and air of the residential units that will have to face these facades.

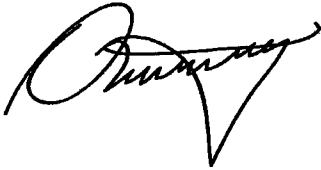
Essentially, the applicant has bought property to construct 38 units with no parking; did not feel the need to do any outreach to the 50+ residents surrounding the property before asking for any approvals; and did not feel the need to provide the Board with any proof to justify any relief that it needs from the zoning code.

I love living where I do. I love the location, the convenience, the crowds and the city living. I like it so much that I invested (a significant amount) in a property with only a view of a very busy alley. I worked hard to "buy-in" to the neighborhood. However, I only bought the place that I did, and paid the price that I did, because I had some assurances—through the zoning code—that however the properties across the alley were redeveloped (that is, if they were developed at all since they were lived-in single-family townhouses), that they would be redeveloped with something that is essentially in line with what the zoning code allows. This proposed development is much, much too dense for the subject property and does not conform whatsoever to the intent of the code.

If the Board finds in favor of the applicant, I'm afraid that underdeveloped properties on the north side of Church Street, including a Volvo repair shop and a parking lot, will be developed with no parking provided, and too much development for the sites. Many of the remaining developable sites within the neighborhood immediate to Church Street sit adjacent to rowhouses within R-5-B zones. The potential non-provision of parking on these sites, as well as other lots on 14th Street that are adjacent to R-4 and R-5-B zones, will only exacerbate the parking problem within the neighborhood. Likewise, as the applicant has provided no analysis on the demand for deliveries (which one can surmise will only be increased where no parking is provided), the Board should not be setting a precedent to allow a project with no parking and no loading plan to move forward without a sufficient transportation management plan that contains mitigation measures to ensure that the public good is not negatively impacted.

For these reasons, as well as those from my previous letters, I oppose this application and their request for relief from the requirements of the zoning code.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul M. Mesterhazy", with a stylized, sweeping flourish at the end.

Paul M. Mesterhazy, Esq.
1515 15th Street NW, #430