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May 14, 2014

By E-mail Submission

Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
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BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18638
EXHIBIT NO. 59

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**Re: Response of Party Opponent Metropole Condominium Association to the Applicant's
May 6, 2014 Supplemental Statement; BZA Application No. 18638, 1456-1460 Church
St, NW**

Dear Chairman Jordan and Members of the Board

This letter is submitted in response to the Applicant's submission of May 6, 2014. In this letter, the Metropole objects to the actions of the Board in re-opening the record and the hearing after four members have already voted on the Application. The Metropole also provides a substantive response below to the Applicant's latest submission.

Objection to Re-Opening the Record and the Hearing

The Metropole renews its objection, registered in its filing of April 14, 2014, to the re-opening of the record for further evidence, hearing, and argument. Granting such a request is an extraordinary action which provides the Applicant a second opportunity to try this case with no reasonable justification therefor. The Applicant's request stated that granting the request to re-open the record would be preferable to waiting for the Applicants to file a new modified application. But this would only be preferable to the Applicant. The fact that the Applicant made the request in this way exposes the fact that it is attempting to re-apply for the parking variance and submit additional argument with the hope of a new vote by the four members who already voted (without waiting the required one-year period for re-filing a denied application).

The Metropole also objects to what appears to be a plan by the Applicant to present an entirely new case (albeit with the same argument). The Applicant apparently intends to present new testimony from the Applicant, the architect, and the traffic consultant, as well as completely new testimony on "market issues" from an unknown witness. Such testimony should not be permitted.

Substantive Response to Applicant's Submission

Despite the Applicant's mention of a "modified" application, it does not appear to have made any material changes to what was voted on by the four Board members. Rather, the Applicant is merely trying, unsuccessfully, to prop up the record with additional arguments based on the same unproven premise.

At the heart of the Applicant's arguments are two fallacies: (i) size of variance relief doesn't matter, and (ii) micro-units are entitled to parking relief as a matter of policy. On the first point, the Court of Appeals

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CASE NO. 18638
EXHIBIT NO. 59

May 14, 2014
Metropole Response

has stated that the degree of variance requested is indeed a factor for consideration in a practical difficulty analysis.¹ On the second point, it is the province of the Zoning Commission to determine public policy and translate that policy into parking requirements and other regulations.

The Applicant's argument has not changed much. It states that its floor plate is constrained by the historic character of the existing buildings, but it provides no persuasive support for this argument; especially considering that the project continues to offer an unconstrained 'one unit for each 100 square feet of land area'. The Applicant perhaps has a unique situation with the existing historic properties (although this is arguably not all that unique in this city), but it has not shown why that fact would justify 100% parking relief on 38 units on a land area of 3,420 square feet.

Applicant's Traffic Engineer Report

The Applicant's Traffic Engineer's Technical Memorandum concentrates on the fact that many residents of this area do not own automobiles. One problem with this generalization is that it contradicts the Applicant's assertion throughout this case that *no tenant* of the proposed project will own a car. The traffic engineer in fact estimates that 4 of 10 tenants will own cars. The second problem with this generalization is that such statistics regarding downtown residents were already contemplated by the Office of Planning and the Zoning Commission when the current parking requirements were adopted.

Summary

Although it is not clear on what basis it is entitled to an additional hearing, the Applicant appears to be making the same argument it made before. It therefore has yet to prove the practical difficulty necessary to justify a 100% parking variance.

Sincerely,



Martin P. Sullivan

Enclosure

cc: Carolyn Brown, Esq., for the Applicant
Office of Planning, Stephen Gyor
ANC 2F

¹ See Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A 2d 1164, 1171 (D.C. 1990), in which the Court ruled "In order for BZA to deal with circumstances such as those presented in the application for variances in this case, BZA has the flexibility to consider a number of factors including, but not limited to: 1) the weight of the burden of strict compliance, 2) the severity of the variance(s) requested; and 3) the effect the proposed variance(s) would have on the overall zone plan. [Emphasis added]