

ADVISORY NEIGHBORHOOD COMMISSION 4C

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SMD 4C01

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OPPOSITION REPORT TO:

BZA CASE #19230

4424-GEORGIA AVENUE, NW

April 13, 2016

PREAMBLE

Each District government agency – DDOT, OP, ANC's and others – all have a role to play in helping BZA come to a final determination, but it is our responsibility, as ANC Commissioners, to advise the BZA on special exceptions and variances issues that they may not be aware of; and as a result, could have an impact on our neighbors and community.

In BZA matters, part of our responsibility is to include the number of conversions that have been done in the neighborhood, as BZA Commissioners don't know, as well as we do – some are by matter of right and as such, not be on the BZA's radar. We must also consider the city's infrastructure, as it relates to any project or the combination of projects, whether or not there will be any effects on parking, public transportation, light, air and privacy or any other issues the affected community may have. In turn, prior to making any decision, BZA, by law, is required to consider and give "great weight" to the determinations reported-out by an ANC; *great weight* being mutually defined as *guaranteed meaningful input*.

Upon notification by the BZA that an applicant is seeking a special exception or variance in any affected SMD, ANC Commissioners, (performing our responsibilities as charged), are required to:

- (1) Review the record;
- (2) Research the request;
- (3) Investigate and report back its findings to the larger body;
- (4) Deliberate any proposed actions in concert with the preparation of a report; then
- (5) Vote on the matter before us.

We can choose not to do any of these enumerated responsibilities, but be we also need to be prepared to suffer the consequences of our inactions – perhaps not for us – for generations to come, ultimate leading to the demise of our communities as we've come to know them and by extension, our ANC Commission as ineffective.

When it comes to these BZA matters, we have a great deal of latitude in our positions and arguments to either approve or deny a request – with suggested conditions – to support or reject a variance or special exception. The process allows for us to rely on certain information that the BZA is required to consider, especially as matters they are not familiar with that their decision will ultimately impact, one way or the other. But for the fact the BZA didn't know, because we, as an ANC didn't tell them, places the burden squarely on our shoulders, as Commissioners, to get it right.

OVERVIEW

Accepting that burden as a SMD Commissioner (4C01), the Applicant, in this matter, is proposing to construct a mixed-use building, with approximately 580sf of ground-floor retail and seven apartment house units. Pursuant to 11 DCMR § 3103.2, for variances from the rear yard requirements under § 774.1, and the parking requirements under §2101.2, to permit the construction of a mixed-use project in the C2-A District at the premises 4424 Georgia Avenue, NW – Square 2917, Lot 37.

On Sunday, March 20, 2016, my colleague and ANC/SMD 4C07 Commissioner John-Paul Hayworth, organized a meeting, well attended by close-in neighbors, along with an architect and legal representative for the property owners. There was a general sense of concern, tempered by cogent responses from the owner's representatives and their willingness to compromise where they could; and I believe that was accomplished, to some extent, as plans have been resubmitted showing some of those agreed-upon changes, but there are still overwhelming objections by those who will be most affected by this and other projects darting the landscape of the immediate area.

P.O. Box 60847
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801 Shepherd Street, NW
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Board of Zoning Adjustment
District of Columbia
CASE NO.19230
EXHIBIT NO.35

ZONING VARIANCE REQUIREMENTS

Subject Property

The three-part test for any applicant seeking a variance requires that

- (1) The subject property be *exceptional*;
- (2) That *strict application* of the zoning regulations would cause an undue burden on the applicant; and
- (3) The proposed variance would not cause any *substantial detriment* to the surrounding community.

Exceptional

Of that 3-prong test, I believe at least 2 of the 3 are questionable – *strict application* and *substantial detriment* – but will concede the *unusual shape* of the property, which is further encumbered by use, as at least 15 feet of the applicant's *front yard* along Allison St., is designated and remains public space – though not unusual – it is *exceptional*.

I also take issue with applicant's assertion that they lack access to the property's rear, from an alley that runs parallel to the 4400-block of Georgia Avenue, but will concede, irrespective of any rulings, for or against, such access would not allow for any improvement to the land, including any designation as a parking pad or any other private use.

Strict Application of the Zoning Rules

Strict application of the Zoning Rules, only becomes an issue because of what the applicant is requesting to do; otherwise, it's not an issue, as the properties basement, 1st floor and rear yard, (up until its recent sale), was being occupied and used as an office and retail space for a (somewhat) non-descript business offering day-labor services, but historically, had seen better days as a continual use of its mix-use designation. Then and now, the subject property could have been greatly improved as a matter of right, precluding any application before the BZA as it currently exist, but the property owners have chosen to seek BZA relief, which is their right, but not under the pretense of *strict application*.

It's not that the developer can't build on the lot; there's something already there – been there – they just can't build what they want without BZA's approval, but they can build something – as a matter of right – with retail and some residential; just not 4-levels, to accommodate 7-units and whatever else they're looking to do.

In other words, it becomes even less agreeable as to what can be done, as opposed to what is being offered. The current owner could greatly improve that lot, as a matter of right, (requesting no rear yard setback), but for them maxing-out the FAR for their own version of mix-use/commercial. Even by their own admission, they're under the FAR for expanded retail, but the 50-foot height restriction is a matter of right. They could build up 50ft on the given lot size – it's not that now – plus a few feet out; still set back from the property line and be within compliance of all zoning regulations.

Parking would still be an issue, but that's everywhere; but 6-900+sf 2-bedroom units, plus 1,000sf of retail space – which is not a lot – squeezes every square inch out of this corner property.

Substantial Detriment to the Public Good

With respect to any effects on our immediate neighborhood, my own review and investigation shows the granting of this variance will have a *substantial detriment to the public good*.

My opposition to this applicant's request is taken in concert with others in the immediate neighborhood, either recently approved by BZA or in the works through other processes. It increases an undesirable density, affecting Ward 4 in general, but two SMD communities – 4C07 and 4C03 – in particular. These continual increases in density, residentially and commercially – constituting higher demand – will effect the natural light, air quality and private enjoyment of surrounding neighbors, add to the demise of *single-family* homes, which effects community life, existing unavailability of unrestricted or restricted parking spaces, along with the deterioration and structural integrity of the city's infrastructure in the area bounded by Buchanan St./North, Georgia Ave./East, Iowa Ave./West and Upshur St./South. A *perfect storm* can be found in and around this general vicinity, as multi-unit development has been growing in leaps and bounds.

Natural Light / Air Quality / Private Enjoyment

The applicant will have a hard time justifying a never before existing, 50-foot tall, mix-use building, with potential for restaurant space – facilitating the use of an exhaust system – attached on one side by a (closed) restaurant and less than 20-feet away from its nearest adjacent neighbor to the West, is not going to effect the natural light and air quality of the buildings and homes, immediately adjacent to or a reasonable distance away from the proposed development.

Demise of Single-Family Homes

Ultimately, developments, such as this, will have a deleterious impact on the building of a community, struggling to maintain and exhibit a strong family environment. The deterioration and lack of available housing-stock gives way to minimal square footage requirements, all within the letter of the law, but not its spirit.

Historically, these were the same tactics used in the late 1930's thru 1950's, in the District and elsewhere, to create more seemingly desirable apartment-style living, in hopes that it would deter an increasing influx of black families into previously segregated neighborhoods; reduce the housing stock, make it undesirable for family living, and they'll go away. According to historical data, this became a common practice in Ward 4.

Unrestricted/Restricted Parking

Further concern as it relates to parking, whether restricted – Residential Parking Permits (RPP), Loading Zones (LZ), Street Cleaning, (SC), Designated Handicap, (DHC), metered – or unrestricted, allowing for reasonable parking availability for a changing, mix-use demographic, with development in specific areas, is a detriment to our community.

There have been past attempts (and I believe in this instance) to restrict the eventual occupants of the proposed project from obtaining RPPs, despite meeting all the criteria for eligibility.

This sort of *high-handedness* creates second-class citizens, in the same neighborhood (no less), out of otherwise law-abiding citizens, in a city that request of its population to support its license-plated mantra of **TAXATION WITHOUT REPRESENTATION**, and then proceeds to violate that very edict against its own citizenry.

We are essentially creating our own unprotected class of ticket scofflaws, villains, thieves, scoundrels, scaly-wags and parking enforcement-dodgers of the rules and regulations, but for no other reason than we couldn't figure out a way to make this work without punishing one group of residents in favor of another.

Despite the applicant's *transportation study*, my parking analysis review showed the following:

<u>BLOCK / STREET</u>	<u>RESTRICTIONS</u>	<u>NOTATIONS</u>
4400 / Iowa Ave.	RPP/No – School Days-Westside/No	Storm Water Bump-outs – 3
4300 / Iowa Ave.	RPP/ Yes – Eastside; School Days-Westside/No	N/A
1100 / Allison St.	RPP/Yes – North/Southside/SC	Storm Water Bump-outs – 1 Southside (after the alley)
4500 / Iowa Ave.	RPP/Yes	Single-family Home Conversion 4 New Units
1100 / Buchanan St.	RPP/Yes – North/Southside/SC	N/A
4500 / Georgia Ave.	SC/10PM Wed.-5AM Thur. – Westside	Multi-unit Buildings – 7 – East/West 2-units on the corner
4400 / Georgia Ave.	Meters/LZ/DHC Meter – SC/10PM Thur.-5AM Fri.	4-unit building/Eastside @ Webster; 3-unit building @ alley; 2-units – 4415-4417
4300 / Georgia Ave.	Yes/Construction-related (2 multi-units) – Westside SC/10PM Wed.-5AM Thur.	Bump-outs – 2; Some Meters; DHC – 2 Worship Service/Fri. – 1-3PM – 1 st Hijrah
1000 / Webster St. (Parallels 1100-block of Allison)	Yes/Northside – DHC/LZ	1-Multi-unit Building – Bump-Out – 1

Deterioration and Structural Integrity of the City's Infrastructure

DCWASA is still assessing the city's infrastructure needs, and DDOT its roads, as a result of an aging system; a work in progress. Development, like that of the applicant, in combination with other nearby projects of smaller and larger scales, will place a significant strain on an aging system and its unknown quantifiers; and it's not being discussed. All of this area development, big and small, will be weighing heavily on an aging infrastructure that we're not absolutely sure what's all down there and working properly. So, everything from low water pressure, sewer backups and water main breaks, to deteriorating road conditions, with pedestrian bump-outs that reduce traffic visibility have now become contributing factors to our community's deterioration, with no end in sight.

CONCLUSION

While I recognize the 2 meetings held by my SMD 4C07 colleague, (which I attended one), where I observed a general consensus of cogent responses from the applicant's representatives to resident's questions, I respectfully disagree with the conclusion that accorded my fellow Commissioner's recommendation to the 4C Commission that the applicant's project be supported.

Further, despite the presence of the applicant's representatives in the audience at the April 13, 2016 public meeting, they did not speak, nor were they even acknowledged as being present. Conversely, there were members of the public in attendance, similarly situated, but in opposition to the variance request – Lyn Abrams/Allison St. and former-Commissioner Ron Bland/Buchanan St. – who wanted to speak, but were not given the opportunity to do so; the chair having decided earlier that “. . . we have a full agenda.” Public comment, consisting of 2-minutes per speaker was allowed, but the public was not informed that there would be no public questions or comments during any of the presentations, which included 2 other BZA matters – # 19233 and #19237 – along with several ABRA matters.

In the end, the absence of one vote, by a Commissioner whose SMD 4C03 adjoins the Northside of the subject property, located in SMD 4C07, prevented ANC 4C's Resolution to Support the applicant's variance request from being nullified, as it would have created a 5-5 tie.

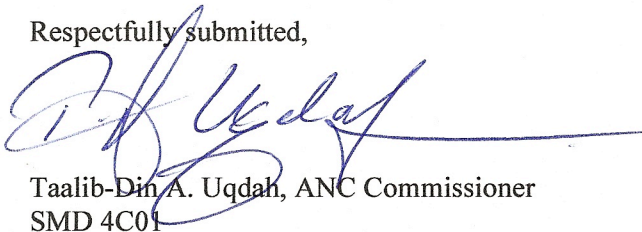
However, the Resolution of my fellow colleagues, while laudable:

- (1) Fails to offer any cogent reasons for that support;
- (2) Failed to meet the basic BZA requirement, to produce a report; and
- (3) Offered no support for Zoning Variance Requirements, relative to the subject property being exceptional, strict application of the zoning regulations or anything related to any substantial detriment to the surrounding community.

While not legally obligated to do so, I respectfully request that BZA accord this Commissioner any great weight it deems appropriate – guaranteed meaningful consideration – in recognizing my efforts to help this body make an informed decision. It is only my intent to have the presentation of my Commission, reflect the thoroughness and thoughtfulness of other agency reports this body has become accustomed too and get away from these boilerplate Resolutions that tell you little of nothing.

Thank you for your time and attention to this issue and my concerns. I stand ready to answer any questions you may have.

Respectfully submitted,



Taalib-Din A. Uqda, ANC Commissioner
SMD 4C01