



ADVISORY NEIGHBORHOOD COMMISSION 4C

Taalib-Din A. Uqdah, ANC Commissioner

SMD 4C01

1373 Jefferson Street, NW; Washington, DC 20011

www.anc4c.org

E-mail: 4C01@anc.dc.gov

202-421-8945 (Mobile/Text)

202-726-3465 (Home)

202-291-1185 (Fax)

May 17, 2016

District of Columbia Government

Office of Zoning

Board of Zoning Adjustment

c/o Ms. Marnique Heath, Chairperson

441 4th Street, NW; Suite 210-S

Washington, DC 20001

via: IZIS 05/17/16

RE: BZA Case #19230 – 4424 Georgia Avenue, NW

**CONTINUAL OPPOSITION CONCERNS
WITH APPLICANT'S SUPPLEMENTAL SUBMISSIONS
(POST APRIL 26, 2016 PUBLIC HEARING)**

As offered the opportunity by the Board of Zoning Adjustment (BZA) to review the Applicant's Supplemental Submissions – post April 26, 2016 public hearing – in the above referenced case, I will address the following areas of concern in my continual opposition to the variances being sought by the Applicant.

The areas of continued concern are: (1) **Rear Alley Access**, (relating to Applicant's request for a parking variance); (2) **Proposed Matter of Right Building** on the Property, (3) **No Off-Street Parking at 4506 Georgia**; (4) **Updated Parking Study**; and (5) **Residential Parking Permits (RPP)**, (prohibiting their application and enforcement by Applicant).

REAR ALLEY ACCESS:

The Applicant claims that the subject property is landlocked, with no rear alley access; concluding the granting of a parking variance is in order, as the Applicant claims they could not comply, even if they wanted to.

However, that claim is disputed and photographic evidence – **Exhibit 1** – suggest otherwise. (See Photos 1/15 thru 4/15)

My view of the subject property and the Applicant's claim (and others) that the subject property is "landlocked," does not take into account what I believe to be a *prescriptive easement* shared by the Applicant and their two adjoining neighbors – 1102 Allison Street, NW to the West and 4422 Georgia Avenue, NW on the South.

A prescriptive easement is generally described as, "*an easement that is earned by regular use – it is not something that is purchased, negotiated, or granted. A prescriptive easement is simply a right to use property; the user does not gain title to the land.*"

I believe the Applicant is refusing to acknowledge that they have such an easement, to better serve their variance request in creating a larger footprint. The photo array clearly shows alley access just to the West of the subject property – **Exhibit 1: Photos 1/15 and 2/15** – with direct access to its rear and that of their Georgia Ave. neighbor – **3/15** – with the rear of the subject property being shown in photo **4/15**. Cars parked in the rear, appear in photos **3/15** and **4/15** of **Exhibit 1**.

The Applicant has just as much right to use the alley access, as does their neighbor – Ms. Senait Abebaw – who testified in opposition before this Commission on the 26th of April, expressing concern that any and all construction performed by the Applicant would interfere with her *rear alley, off-street parking space*, in the building directly adjacent to the subject property. If 4422 has rear alley access and off-street parking, why wouldn't the subject property, 4424 have the same?

The legal concept of *adverse possession*, in not a concern, as the Applicant would not be seeking to seize "*the occupation of land to which another person has title with the intention of possessing it as (their) own,*" but to continue a right they have always enjoyed – access to parking – up until now.

P.O. Box 60847
Washington, DC 20039

801 Shepherd Street, NW Board of Zoning Adjustment
Washington, DC 20011 District of Columbia

CASE NO.19230
EXHIBIT NO.45

The Applicant is *in denial* that the rear of the subject property has such a prescriptive easement – the right to use the rear of the property – that is typically earned by regular use, but is refusing to acknowledge it; preferring instead to engage in a self-imposed *estoppel*, which *Black's Law Dictionary* defines as: “a bar or impediment raised by the law, which precludes a man from alleging or from denying a certain fact or state of facts, in consequence of his previous allegation or denial or conduct or admission, or in consequence of a final adjudication of the matter in a court of law.”

PROPOSED MATTER OF RIGHT BUILDING

In its supplemental submissions, the Applicant discusses – Page 3/Paragraphs 5 and 6 – what it could build as a matter of right and offers Exhibit B into evidence as an example of a proposed matter of right structure.

Assuming all of Applicant's calculations are correct and illustrative, which they are not – they don't match the narrative – I am concerned that the narrative seems to imply that the Applicant is being *considerate* of the neighborhood by not maximizing the bulk and height of a building, *by right*, while failing to also note the difficulty – assuming Applicant doesn't have a commercial tenant ready to lease the space – in leasing two floors of retail, with a basement/cellar.

While the drawings do appear to show a separate basement/cellar entrance that could accommodate a separate commercial entity, it's only 400sf, below ground, offering a limited number of qualifying prospects, making it less likely to be separately tenanted. And while the Applicant's narrative notes 1,430sf of retail – Exhibit B – by my calculations, the drawings provided show twice that amount, as noted in paragraph 5/page 3 of the Applicant's narrative and not what is offered in paragraph 4, same page, same exhibit.

Further, if what the Applicant is offering as a matter of right were viable, there would be no need to file a request for a variance, but it's not; their *by right* options, whatever they may be, are not the most viable or lucrative for them, financially. Having the potential for both retail space – albeit much, much smaller – while increasing the subject property's residential footprint, is a much more attractive option, thus a variance request.

NO OFF-STREET PARKING AT 4506 GEORGIA

While I recognize the Applicant's submission of this part of their report was requested by the BZA, I find its comparison to be out of character with what's being proposed by the Applicant. The 4400 and 4500 blocks of Georgia Avenue, NW, are unique within themselves; each offering a separate set of building designs and uses that are distinct for each one.

While the photo exhibit submitted for 4506 is accurate and clearly shows no parking for a 13-unit apartment building, it is not a C-2A mix-use property. A better comparison would have been the C-2A buildings in the same block as the subject property, which all have off-street parking, except those that have built all the way back to their rear property lines. Just because the existing apartment building across the street has no *off-street* parking, doesn't mean an applicant, seeking a BZA variance to create 7-apartment units, should have that same right.

Exhibit 2 – Photos 5/15 thru 11/15 – shows a continuing use of alley access/rear parking throughout the entire 4400 block of Georgia Avenue; and further **Exhibit 3** – Photos 12/15 thru 15/15 – shows an oddly shaped grouping of seven (7) rear lots, owned by multiple owners that could be considered for private parking for the tenants or owners of the subject property.

Zoning records list those properties – all zoned R-4 – as follows:

<u>SQ/LOT</u>	<u>Location</u>	<u>Owner/Address</u>
2917/0800	Iowa Ave.	Henry Willoughby – 3705 Carpenter St., SE 20020
2917/0802	NW	John C. Dehonesto – 1118 Allison St., NW 20011
2917/0804	1106 Allison St., NW	John Garrison – 4409 5 th St., NW 20011
2917/0808	1011 Webster St., NW	John Garrison – 4409 5 th St., NW 20011
2917/0809	1108 Allison St., NW	James Wimmel – Traceys Landing, MD
2917/0810	4407 Iowa Ave., NW	Thomas B. Spell – 3009 Hawthorne Dr., NE 20017
2917/0811	4407 Iowa Ave., NW	Lafayette Parker – Little River, SC

P.O. Box 60847
Washington, DC 20039

801 Shepherd Street, NW
Washington, DC 20011

UPDATED PARKING STUDY

Gorove/Slade (G/S) notes in its 05/05/16 Technical Memorandum – Parking Study – report* – Pg. 1/Paragraph 4: *“Parking for (those) who choose to own cars will be accommodated by the on-street parking spaces in the vicinity of the site. In this case, the practical difficulty of supplying off-street parking . . . and the adequate supply of available on-street parking satisfy the requirements for obtaining relief . . .”*

DDOT concurs in its 04/19/16 report – Page 4: *“Given these conditions, the surrounding street network has the capacity to meet the parking demand generated by the requested variance.”*

Further, G/S notes – Paragraph 3: *“ . . . the Applicant has proposed its own TDM measures and agreed to DDOT’s . . . TDM measures . . . ;”* but DDOT notes – Paragraphs 6 & 7: After listing Applicant’s proposed TDM measures: *“These measures are not robust . . . should not be considered TDM measures . . . investigating the cost of installing a TransitScreen and working . . . to determine the location of a future . . . Bikeshare station . . . are not . . . commitments.”*

The juxtaposition of these statements, **should not** give rise to restricting RPP/VPP; to do otherwise allows the reports to act as evidence against its own findings.

(***Correction** G/S report(s) – Paragraph 2/Line 1: The site is located in **Ward 4**, not Ward 6).

RESIDENTIAL PARKING PERMIT (RPP)

The Applicant’s supplemental submissions – Exhibits F & G – supporting its establishment and enforcement of RPP claims, tests the boundaries of the law – it’s ambiguous – and the patience of the courts – violating Fair Housing laws.

Under these circumstances, a case could be made under Fair Housing Statutes, that forbids, *“Coercing, threatening, intimidating, or interfering with a person's enjoyment or exercise of housing rights based on discriminatory reasons or retaliating against a person or organization that aids or encourages the exercise or enjoyment of fair housing rights.”*

While it is acceptable that violations of the law, occurring within the boundaries of your own domicile, can have severe legal consequences – possession of narcotics with intent to distribute as one example – it is unacceptable that any violation you commit outside of your own place of residence – obtaining a RPP sticker – without due process, that you, as an owner or tenant, may be *prosecuted*, with other sanctions to follow, for obtaining one.

A denial of a RPP proposal, not only penalizes the owners or tenants of the subject property, but their families, guests and other visitors – contractors – as well. Denial of RPP also denies either party the convenience and rights to a Visitor’s Parking Pass (VPP), which holders of RPPs are automatically entitled to and are not separately distributed, but made a part of the RPP process.

Applicant’s evidence to the contrary – Exhibit F – is more *smoke and mirrors*. The Department of Motor Vehicles, (DMV), is not the controlling authority; DDOT is. The DMV does not establish either RPP or VPP; they’re only following the authority vested in DDOT.

Language, to the contrary, no matter when or where it’s inserted, or how it’s recorded, does not make it legally binding or enforceable. Any covenant inserted to discriminate against a potential owner or a tenant, attempting to exercise their legal right to enjoy the comforts of their own domicile, without such restrictions, pales in comparison to those under the direct control of the landlord or owner.

What you do inside of your home – bringing home a dog or a cat, when pets are restricted in your building – is not the same as denying that same person the right to legally apply for and be granted, without threat of eviction, mortgage notification or condo board sanctions, a RPP – and by extension a VPP – especially when everyone else has one. This Commission just granted a variance to 1117 Allison – less than 100ft. West of the subject property – for 3 apartments, with no RPP/VPP restrictions; the same exist for several units in the 4300 block of Georgia Ave.; one block south of the subject property.



P.O. Box 60847
Washington, DC 20039

801 Shepherd Street, NW
Washington, DC 20011