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May 19, 2016

VIA IZIS

Marnique Heath, Chairperson
Board of Zoning Adjustment
441 4th Street, N.W., Suite 210S
Washington, DC 20001

Re: BZA Case No. 19230 (the "Application") - 4424 Georgia Avenue NW (the "Property")

Power Point Presentations for May 24th Hearing and Response Letter

Dear Chair Heath & Members of the Board:

On behalf of 4424 Georgia Ave LLC (the "Applicant") in the above-referenced BZA case, please find enclosed the Applicant's power point presentations for the May 24th continued hearing on the above-referenced case. Also, please find the Applicant's summary response to the May 17 and May 18 letters submitted by Mr. Taalib-Din A. Uqdah an ANC 4C commissioner who voted with the minority of the ANC to oppose the Application at the April 13th ANC meeting.¹

I. UPDATED POWER POINTS PRESENTATIONS

As directed by the Board at the April 26th hearing, the Applicant is hereby submitting two updated power point presentations that will be used at the May 24th continued hearing.

¹ ANC 4C voted to approved the Application by a vote of 6 to 3, as noted in the ANC's report filed at Exhibit 34.

The first presentation summarizes many of the issues addressed in the Applicant's post April 26th supplemental submission ("Post-Hearing Submission") included in the record at Exhibit 44 and 44A – 44G, including the updated sun studies, plans for an all-retail matter of right building, information about lack of parking at 4506 Georgia Avenue, as well as RPP restriction conditions and information. It is anticipated that the project architect, Steven Dupont, will continue to testify to the architectural plans, while Meridith Moldenhauer, Esq. a partner at Griffin, Murphy, Moldenhauer and Wiggins LLP, could testify regarding the RPP restrictions in condominium buildings and Ben Wilson, an investment associate at the commercial real estate brokerage firm of Marcus & Millichap, could testify regarding the marketing of RPP-restricted buildings.

The second power point presentation summarizes the findings of the updated parking study that was submitted at Exhibit 44E and will be addressed by the Applicant's traffic consultant, Erwin Andres of Gorove Slade and Associates. Mr. Andres has also expressly requested that staff from DDOT attend the May 24th hearing to respond the Board's questions regarding RPP.

II. SUMMARY RESPONSE TO MAY 17TH and 18TH LETTERS

Mr. Taalib-Din Uqdah. ("Mr. Uqdah'") is the Single Member District Commissioner for ANC4C01, another SMD in the ANC 4C's large geographical area. As stated above, Commissioner Uqdah voted with the minority of ANC 4C members to oppose the Application at the April 13 ANC meeting.²

In his May 17th and follow up. May 18th letters, Mr. Uqdah raises five claims that are addressed in turn below.

A. THE APPLICANT REQUIRES A PARKING VARIANCE

First, Mr. Uqdah tried to undercut the Applicant's argument for a parking variance by asserting that the Applicant has a "prescriptive easement" across the rear portions of Lot 36 and Lot 38 (the "Adjacent Properties") that allows vehicular alley access for the Property. To support this argument, Mr. Uqdah has included photos that appear to show vehicles parked behind the Property.

Mr. Uqdah's assertion lacks basis in the law because 1) the Property has no rear alley access; 2) as such, a prescriptive access easement, such as the one Mr. Uqdah claims is in place here, must be established by D.C. Superior Court, which has not occurred in this case, and, the determination as to whether or not such an easement exists is outside the Board's scope of

² Even though Mr. Uqdah has submitted his comments on official ANC 4C stationary and files his comments in IZIS as transmissions from the "ANC", his statements are not entitled to "great weight" as would be due the ANC. Commissioner John-Paul Hayworth, the SMD for ANC4C07, is the duly authorized ANC commissioner authorized to speak on behalf of the ANC on this application as set forth in the ANC's report at Exhibit 34. Commissioner Hayworth, spoke in support of the Application at the April 26th hearing, and voted to support the Application at the April 13 ANC vote.

1. The Property has no rear alley access.

As discussed during the April 26th hearing, and as confirmed by Steve Mordfin from the Office of Planning, the Property has no access to the alley because it is surrounding on all sides by other properties. An image documenting this condition is below:

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Due to the lack of alley access, the ideal legal way for a vehicle to access the rear of the Property from the alley would have been for the current property owners, Mr. Richard Hiltner and Mr. John Knotts (the “Owners”) to enter into an access easements with the owners of both Lot 36 to the west and Lot 38 to the south, and for such easements to be record in the District of Columbia land records. An easement is “[a]n [recorded] interest in land owned by another person, consisting of the right to use or control the land...for a specific limited purpose.” *Martin v. Bicknell*, 99 A.3d 705, 708 (D.C. 2014). The Owners do not have such an easement, and no such easements are recorded in the land records. That fact is not contested by Mr. Uqdah.

as a “right to use another’s property which is not inconsistent with the owner’s rights and which is acquired by a use, open and notorious, adverse and continuous for the statutory period.” *Black’s Law Dictionary*, Special Deluxe Fifth Edition (1979).

This claim fails. First, prescriptive easement are not “created”, rather, they are petitioned for, and approved by, the D.C. Superior Court. Accordingly, in this case, if a prescriptive easement did exist, which it does not, the Owners would have needed to demonstrate to the Court that they satisfied the legal standards for the creation of such an easement right. In the present case, to the best of the Applicant’s knowledge, the Owners have not filed a petition seeking prescriptive easement, and the Court has not found that a prescriptive easement exists at the Property.

Furthermore, as prescriptive easements are creations of law based on a Court’s decision, the issue of whether a prescriptive easement exists at a property is outside of the Board’s purview. The Board, as far back as 1977, noted that, “ [A]s to the question of the possible [prescriptive] easement [to provide] access to MacArthur Blvd., the Board concludes that it not the proper body to resolve such a question, and that those seeking to establish and/or maintain the [prescriptive] easement must pursue that issue elsewhere.” *BZA Application 12550 of MacArthur and V Street Associates*.

3. The Applicant does not satisfy the requirements to obtain a prescriptive easement

Notwithstanding the above, it is important to note that even if the Owner had submitted such a petition to the Courts, it is highly unlikely to have been granted, because the Owner does not satisfy the requirements to establish a prescriptive easement in the District of Columbia. In the District, a prescriptive easement “requires open, notorious, exclusive, continuous, and adverse use for the statutory period of fifteen years. *Id.* at 711 (D.C. 2014). Based on the report for the Office of Tax and Revenue attached here as **Tab “A”**, the Owner has only owned the Property since April 30, 2004; three years short of the statutory requirement. Accordingly, even if the Owner wanted to seek a prescriptive easement from the Court, it could not do so at this time because it does not satisfy the underlying legal standards of openly, notoriously, exclusively, continuously and adversely crossed the Adjacent Properties **for a period of 15 years.**

B. MATTER OF RIGHT BUILDING SHOWN IS VALID

Next, Mr. Uqdah questions the matter of right building the Applicant included as Exhibit 44B. The matter of right building shown in that exhibit is valid for the reasons stated in the Applicant’s Post-Hearing Submission in the record at Exhibit 44, because it satisfies the requirements of the C-2-A zoning standards. As the Applicant noted in its Post-Hearing Submission, the purpose of submitting conceptual plans for a matter of right building was to

support the images in the shadow study. The matter of right building addressed in the Post-Hearing Submission does just that.

In addition, the Applicant also proposes an alternative matter of right building that would be 100% retail and have two, approximately 25' tall stories of retail. Plans for such a building are included in the power point submission. That building could be constructed as a matter of right without parking as shown below:

Standard	Requirement	Proposed in 100% retail building	Matter of right requirement satisfied
Height (11 DCMR § 770.1)	Max: 50'	49' – 4" Two stories of retail: 21'-4" and 28', each	Yes
Penthouses (11 DCMR § 770.6)	12', except 15' for penthouse mechanical space	9' – 6"	Yes
Density (11 DCMR § 771.2)	Max: 1.5 FAR (non-residential)	0.92 FAR (Total of 2,860 s.f. of retail/ 3,103 s.f. lot size)	Yes
Percentage of Lot Occupancy (11 DCMR § 772.1)	Max: 60%	46% (1,430 s.f. building footprint / 3,103 s.f. lot size)	Yes
Rear Yard (11 DCMR § 774.1)	Min: 15'	15'	Yes
Side Yard (11 DCMR § 775.5)	N/A	N/A	Yes
Courts (11 DCMR § 776.1)	N/A	N/A	
Parking (11 DCMR § 2101.1)	Retail or service establishments: In excess of 3,000 s.f., 1 space for each additional 300 s.f. of gross floor area and cellar floor area	2,860 s.f. of retail proposed in building. No parking spaces required	Yes

C. NO OFF STREET PARKING AT 4506 GEORGIA

Mr. Uqdah confirmed the Applicant's finding that the 13-unit apartment house at 4506 Georgia Avenue does not have off-street parking spaces for its residents. At this time, the Applicant cannot confirm Mr. Uqdah's other statement that "all" the [C-2-A- zone buildings on the same block as the Property] have "off-street parking". The Applicant has not conducted a survey of the availability of legal, off-street parking spaces in the short period since Mr. Uqdah

filed his report on May 17, and the Board's deadline for submissions at 3:00 p.m. on Thursday, May 19th.

D. UPDATED PARKING STUDY IS VALID

Next, in both his May 17 and May 18 letters, Mr. Uqdah questions the conclusions of the updated parking study. The Applicant's Traffic Consultant will respond to these questions fully at the May 24th hearing. However, on the required brief review, these comments do not raise concerns that undermine the validity of the traffic study, which shows sufficient on-street parking spaces, in both the RPP and non- RPP streets to accommodate the four parking spaces that would be generated by the Project.

E. RESIDENTIAL PARKING PERMIT RESTRICTIONS DO NOT VIOLATE THE FAIR HOUSING ACT

Finally, Mr. Uqdah implies that a covenant restricting RPP at the Property violates the Fair Housing Act (the "Act"). This claim lacks a basis in the law, because a RPP restriction plainly does not violate the Act. The Act, codified at 42 U.S.C. 3601 et. seq. (also known as Title VII of the Civil Rights Act of 1968) outlawed the refusal to sell or rent a dwelling to any person because of race, color, religion, sex, national origin, disability, and the presence of children. It also prohibits discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin. A summary of the application of the FHA from the U.S. Department of Housing and Urban Development ("HUD") website is attached here at Tab "B". The FHA law plainly does not guarantee a right to a residential parking permit.

The Applicant would rent or sell to anyone regardless of their race, color, religion, sex, familial status or national origin. The RPP restriction applies equally to all tenants or owners, regardless of their race, color, religion, sex, familial status, or national origin. And it goes without saying that pursuant to the Americans with Disability Act and DDOT's policies, any renter or owner with a physical disability could seek approval from the DMV for a designated, handicapped parking space in front of the Property.

In compliance with the FHA, the Applicant will advertise the units to *all*, regardless of their race, color, religion, sex, familial status or national origin. No one will be forced to live at the Property; all tenants or owners will make a choice. Therefore, contrary to Mr. Uqdah's contention that the Applicant would be "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 of fair housing rights”, the Applicant will be in compliance with all federal and local housing laws. As noted by HUD, the Fair Housing Act has a very specific scope and protects certain classes. Residential parking permits are outside of that scope.

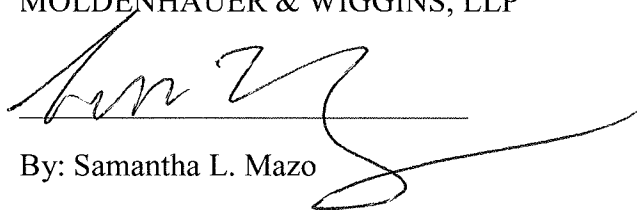
III. CONCLUSION

With this filing, we believe that the record is complete in this case, and the matters raised by the Board at the April 26th hearing as well as Mr. Uqdah in his filings have been addressed.

We will be happy to respond to questions at the May 24th hearing.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

A handwritten signature in black ink, appearing to read 'Samantha L. Mazo', is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

By: Samantha L. Mazo

Enclosures

CC (via email with link to IZIS for exhibits):

John-Paul Hayworth, SMD 4C07
Taalib-Din A. Uqdah, ANC 4C Commissioner
Steve Mordfin, Office of Planning
Anna Chamberlin, DDOT
Robyn Jackson, DDOT

TAB A



Property Detail

Address: 4424 GEORGIA AV NW

SSL: 2917 0037

Record Details

Neighborhood:	16TH ST. HEIGHTS	Sub-Neighborhood:	C
Use Code:	49 - Commercial-Retail-Misc	Class 3 Exception:	No
Tax Type:	TX - Taxable	Tax Class:	001 - Residential
Homestead Status:	** Not receiving the Homestead Deduction		
Assessor:	SHERMAN LAMBERT		
Gross Building Area:		Ward:	4
Land Area:	3,103	Triennial Group:	3

Owner and Sales Information

Owner Name:	RICHARD H HILTNER
Mailing Address:	1333 FAIRMONT ST NW; WASHINGTON DC20009-6940
Sale Price:	Not Available
Recordation Date:	04/30/2004
Instrument No.:	59552
Sales Code:	MISC
Sales Type:	I - IMPROVED

Tax Year 2017 Preliminary Assessment Roll

	Current Value (2016)	Proposed New Value (2017)
Land:	\$176,930	\$193,010
Improvements:	\$342,890	\$378,020
Total Value:	\$519,820	\$571,030
Taxable Assessment: *	\$519,820	\$571,030

* Taxable Assessment after Tax Assessment Credit and after \$71,700 Homestead Credit, if applicable. (Click here for more information).

** If you believe you should be receiving tax relief through the Homestead deduction program and if you are domiciled in the District and this property is your principal place of residence, you can access the link below, complete the form, and return it per the instructions. For additional information regarding the Homestead program, call (202)727-4TAX. Click here to download the Homestead Deduction and Senior Citizen Tax Relief application *

[View Tax Information](#) | [View Payments](#) | [View Current Tax Bill](#)

TAB B

Fair Housing-It's Your Right



Related Information

- ▶ [Housing Discrimination Complaint](#)
- ▶ [Fair Housing Act](#)
- ▶ [Title VI of the Civil Rights Act of 1964](#)
- ▶ [Americans with Disabilities Act](#)
- ▶ [Administrative Law Judges Equal Opportunity for All Booklet](#)

Learn about the Fair Housing Act

The Fair Housing Act protects people from discrimination when they are renting, buying, or securing financing for any housing. The prohibitions specifically cover discrimination because of race, color, national origin, religion, sex, disability and the presence of children. [Learn more](#)

1.) Get basic facts about the Fair Housing Act

1.)What Housing Is Covered?

The Fair Housing Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

2.)What Is Prohibited?

In the Sale and Rental of Housing: No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting) or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

In Mortgage Lending: No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap (disability):

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminate in appraising property
- Refuse to purchase a loan or
- Set different terms or conditions for purchasing a loan.

In Addition: It is illegal for anyone to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

3.)Additional Protection if You Have a Disability

If you or someone associated with you:

- Have a physical or mental disability (including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that substantially limits one or more major life activities
- Have a record of such a disability or
- Are regarded as having such a disability

your landlord **may not**:

- Refuse to let you make reasonable modifications to your dwelling or common use areas, at your expense, if necessary for the disabled person to use the housing. (Where reasonable, the landlord may permit changes only if you agree to restore the property to its original condition when you move.)
- Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.

Example: A building with a no pets policy must allow a visually impaired tenant to keep a guide dog.

Example: An apartment complex that offers tenants ample, unassigned parking must honor a request from a mobility-impaired tenant for a reserved space near her apartment if necessary to assure that she can have access to her apartment.

However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.

4.)Requirements for New Buildings

In buildings that are ready for first occupancy after March 13, 1991, and have an elevator and four or more units:

- Public and common areas must be accessible to persons with disabilities
- Doors and hallways must be wide enough for wheelchairs
- All units must have:
 - An accessible route into and through the unit
 - Accessible light switches, electrical outlets, thermostats and other environmental controls
 - Reinforced bathroom walls to allow later installation of grab bars and
 - Kitchens and bathrooms that can be used by people in wheelchairs.

If a building with four or more units has no elevator and will be ready for first occupancy after March 13, 1991, these standards apply to ground floor units.

These requirements for new buildings do not replace any more stringent standards in State or local law.

5.) Housing Opportunities for Families

Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under 18 live with:

- A parent
- A person who has legal custody of the child or children or
- The designee of the parent or legal custodian, with the parent or custodian's written permission.

Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

Exemption: Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older.

A transition period permits residents on or before September 13, 1988, to continue living in the housing, regardless of their age, without interfering with the exemption.

2.) If You Think Your Rights Have Been Violated

3.) What Happens when You File a Complaint?