



ADVISORY NEIGHBORHOOD COMMISSION 4C

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SMD 4C01

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OPPOSITION TO BZA #19237

3700-14TH STREET, NW

April 15, 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 we also need to be prepared to suffer the consequences of our inactions – perhaps not for us – for generations to come, ultimately 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, pursuant to 11 DCMR § 3103.2, for variance from the off-street parking requirements under § 2101.1, to allow construction of a new four-story residential addition containing 4-units above an existing restaurant in the C-2-A District at 3700-14th St., NW (Square 2692/Lot 43).

On March 31, 2016, my colleague and ANC/SMD 4C04 Commissioner Michael Halpern, organized and held a meeting with the applicant, neighbors and fellow Commissioner Zach Teutsch; to my knowledge, there was no invitation that I could find in the record, inviting other Commissioners who may have had an interest in this project, most notably myself.

According to documents uploaded to IZIS April 15, 2016, (on old ANC stationary – SMD 4C10 is not vacant) that meeting produced an agreement to certain conditions, some of which I find to be unenforceable by this or any other agency having charge over the conditions outlined. One includes certain restrictions to be applied to a non-existent loading zone on the North-side of Spring Road; and though I'm not a transportation engineer, fully understand why DDOT has chosen to prohibit parking of any kind along this area of the street. Loading zones already exist in the 3700 block of 14th St. – Westside – serving the 10 commercial establishments, including the subject property, in the area.

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801 Shepherd Street, NW
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Board of Zoning Adjustment
District of Columbia
CASE NO.19237
EXHIBIT NO.31

Additionally, ANC 1A also approved the applicant's request at its March 10th public meeting, but offered no substantive, supporting documentation. Their Resolution used the exact same language offered in the *Applicant's Statement in Support*, January 28, 2016, ultimately giving BZA nothing it wasn't already made aware of month's ago.

It draws me to conclude that ANC 1A and 4C have abrogated their sworn duties and responsibilities to our constituents, by failing to act properly in deliberating and reporting out on this BZA matter in particular – and I assume others – especially to your agency; and it is my intention to draw attention to that for your consideration and deliberation.

We, as elected officials, have a sworn duty to perform. My presumption is – based on my Preamble – your agency expects more from us than what has been delivered by my colleagues, who, in my opinion, have failed in that duty; and I would like to know what I'm missing? Am I misinformed or misguided as it relates to what it is BZA expects from us?

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 in its use; as (at least) a 15-foot deep portion of the applicant's *side yard*, from the public sidewalk that runs adjacent to the entire length of the applicant's property line along Spring Rd. – perhaps some 90 feet – is designated and remains public space. Though not unusual, it is *exceptional*.

However, historically, in the District of Columbia, this has been a known-factor – public space directly adjacent to commercial properties along corner lots – for decades. I personally own one such property, 10-blocks north of the subject property and in 2006, offered recommendations to former aides to Mayor Adrian Fenty, specifically on the subject property before you now.

Those recommendations included:

1. Selling us the adjacent land, preserving portions for green space; or
2. Granting us easement considerations, on a case-by-case basis, allowing for concrete pads as trash collection sites or depending on space availability, parking.

Neither proposal was ever seriously considered, but that said, I still consider it to be (or should be) *common knowledge* for anyone, having done their due diligence, to know (or should have known), what limitations you could conceivably face when making any real estate purchase.

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 the Carolina Restaurant and could have been greatly improved, then and now, as a matter of right.

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 (perhaps) some residential; just not 5-stories, to accommodate 4-units above an existing restaurant and whatever else they're looking to do. New zoning regulations are scheduled to go into effect less than 5-months from now, offering this applicant some relief from the present requirements before you today.

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*, if taken in concert with other development in the immediate area, either recently approved by BZA or in the works through other processes. These continual increases in density, residentially and commercially – constituting higher demand – will effect the natural light, air quality, and private enjoyment of the effected community; become a causal affect in contributing to the continual demise of single-family homes, and neighborhood serving retail in this specific neighborhood, which will ultimately effect community life, the existing unavailability of unrestricted or restricted parking spaces, along with the deterioration and structural integrity of the city's infrastructure.

Increased Density

The approval of this project would add to the increase and undesirable density effecting both Ward 4 and Ward 1 in general, but three SMD communities – 4C04, 4C05 and 1A04 – in particular, as the project shares a common border between them, bounded by Shepherd St./North, Georgia Ave./East, 16th St./West and Parkwood Pl./South. A *perfect storm* can be found on Spring Rd., from Georgia Ave. to 16th St. – 1000 to 1500 blocks – and its North-South intersection with 14th St., coupled with the developments between Shepherd St. to Parkwood Pl. – 3900 to 3500 blocks.

By example: There are at least four projects along the Spring Rd. corridor that BZA Commissioners are not even aware of; at least 3 of the 4 are by-right projects – SOME: 1433-1435 Spring; HOPE Cooperative: 1445 Spring (both by right) – requiring no BZA involvement; and the old Hebrew Home and its adjacent building – all multi-unit buildings – the smallest being thirteen (13) units, the largest 123 and counting.

Additionally, this Commission just decided BZA Case #19088 – the application of Jose Ayala, pursuant to 11 DCMR § 3103.2, for variances from lot occupancy requirements under § 772.1, the rear yard requirements under § 774.1, and the off-street parking requirements under § 2101, to allow construction of a new four-story mixed use building in the C-2-A District premises 3701-14th St., NW (Square 2826/Lot 96) – directly facing the subject property. Its plans are to also offer a restaurant/bar-type operation in its commercial space, with 6-units above, on three floors. That application was approved on 02/29/16.

Shortly thereafter – 03/11/2016 – not that there is any suspicion of nefarious wrongdoing, the property was listed for \$1,050,000.00 on MLS ID: 9594074. As of this writing, no party in this matter, including BZA, knows what to expect.

Natural Light / Air Quality / Private Enjoyment

The applicant will have a hard time justifying a – never before existed – 50-foot tall, mix-use building, with restaurant space – facilitating the use of an exhaust system – attached on one side to an existing market and at its rear, residential housing across an alley, to 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.

Causal Effects / 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.

Neighborhood Serving Retail / Community Life

The other *detriment to the neighborhood* issue, are the number of bars, taverns and restaurants, concentrated within the same area – all in fierce competition with each other – all in a rush to shut-out any other neighborhood serving retail.

By example: the Westside of 14th St., where the subject property is located at Spring Rd., going North, one-block to Quincy; of the ten (10) existing commercial establishments, seven (7) have some type of ABRA license, leaving a cleaners, a retail clothing store and a Hispanic corner store-type operation to serve the immediate community; five (5) of those first six (6) establishments mentioned, are all alcohol related businesses; something no community can survive on.

Unrestricted/Restricted Parking

Further concern as it relates to parking, whether restricted – Residential Parking Permits (RPP), Loading Zones, Street Cleaning, Designated Handicap, 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 on other projects – and in this instance – to restrict the eventual occupants of the proposed project from obtaining RPPs – the promotion of additional bike stations – despite meeting all the criteria for eligibility.

This sort of *high-handedness* creates second-class citizens, in the same neighborhood, 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.

We still have not addressed all this development in such a concentrated area, and how it's going to effect parking – something DDOT captioned in its report – **TRANSPORTATION ANALYSIS / Parking**, but was non-descript in its narrative; “. . . parking demand created by development is primarily a function of land use, development square footage and price/supply of parking spaces;” then goes on to note, without further comment, “. . . other factors contribute to the demand for parking, such as the availability of . . . transit, . . . transit service and proximity to transit.”

That's it; no causal affects, no in depth review; they don't even mention any of their criteria's – pro or con – in relationship to the subject property; there is simply no elaboration whatsoever.

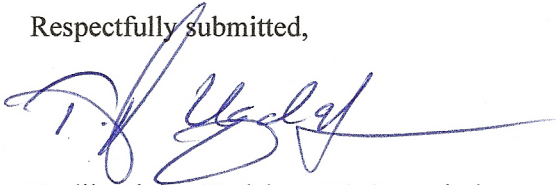
Deterioration and Structural Integrity of the City's Infrastructure

Finally, there's been no discussion at all, as to how all of these new developments and upgrades, including 3700, are going to effect the immediate area's infrastructure; our water and sewer system. All of this will be weighing heavily on an aging infrastructure that we're not absolutely sure what's all down there, below us, and working properly. So, low water pressure for your morning shower or trouble flushing – or worse, backups – when you come from your own bathroom or kitchen will be commonplace, because the system itself will be overwhelmed.

For the reasons articulated above, I urge this Commission to reject this application, until such time as we can have a full accounting of how all of this development is affecting our immediate community – commercially and residentially – outlined (at least) within the boundaries I offered, a more thorough report from DDOT, showing the impact on parking within those same boundaries, with the added addition of 4 new levels of floor space, creating 5 stories at 3700, the lack of neighborhood serving retail in the immediate vicinity and the possible deleterious effects on our infrastructure, without so much as a preliminary report, advising us (at the very least) the age of the existing system, within the boundaries outlined and its capacity; just how much more can it take.

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. Uqdah, ANC Commissioner
4C01