

Dear Members of the Board of Zoning Adjustment:

As the owners of an adjacent property, 215 3rd Street SE, we submit this letter to oppose the application as set forth in BZA Case 19683. The Applicants are seeking three variances and two special exceptions to convert a parking area behind our house into a two-story residential building. As affected neighbors, we oppose the special exceptions, variances, and the construction for the following reasons:

1. Air and light impacts to our patio and easement
2. Light impacts to planned solar panels on our garage
3. Special trees
4. Improper notice and its effect of being recognized as a party to this case
5. The lack of a construction management agreement, as required by the ANC

Air and Light Impacts

Approving the project will impair our ability to use and enjoy our property. First, the project will significantly impact our air and light. The structure will impede our patio and house's light during the hours before sunset as the building overshadows our garage from the west. Second, the development would turn an open-air easement area into a dark, potentially dangerous, unmonitored, and narrow gap. Currently, 211 3rd St SE owns the land between our properties and the proposed development (211 - 215 3rd St SE), and we (215 3rd St.) have an easement to use this land for passage and to keep our trash on it. The current application does not adequately address these impacts to our property or the easement area.

Furthermore, rats are an issue around our property, including this easement. As of August 2017, the Department of Public Works (DPW) found "2 rat burrows in the alley" in response to our service request (ID Number 17-00432600). As recently as January 2018, DPW has a separate pending service request (ID Number 18-00045425).¹ Decreased light and air in the area, compounded with increased density and trash, could exacerbate the rodent problem(s) already evident in our area.

In addition, it is not clear at this time where the trash cans would be placed for pickup. Currently our private easement and the street curb are the locations we place trash cans for pickup. The Applicants' current plans do not include any potential trash pickup location, such as a private but open area to place those cans for pickup. Our curb area on 3rd Street is already overburdened with trash cans, and we are concerned that a lack of planning for trash services will result in encroachment on our easement.

¹ D.C. Open Data. *City Service Requests in 2018*. <http://opendata.dc.gov/datasets/city-service-requests-in-2018>

Solar Impacts for our Garage

Evidence in the Record does not specifically address how the proposed structure would shade the roof of our garage, which is relevant to our evaluation of a pending solar project for our property. We are currently under contract with a solar firm to evaluate and install solar panels on the roof of our house and garage. Currently, this project is in the assessment stage, and we have brought the proposed development to the attention of our solar contractor to help evaluate the impacts. The Applicants' architect presented a solar study at the ANC meeting (not currently included in the BZA record). The Applicants' solar study demonstrated that the proposed structure would indeed shade the roof of our garage at times when current buildings in the area do not shade the roof of our garage. However, as the study was limited temporally, it did not address its full impacts. Indeed, the study consisted of an aerial view from four hours in the day at four different dates of the year; however, it did not assess the amount of solar power prevented from reaching our roof by this proposed structure. In addition, since what was presented to the ANC and ourselves was an aerial view (2-dimensions) and not 3-dimensional renderings, as have appeared in other cases before the BZA, it is unclear whether the assessment included the height of our sloped roof as 14 or 10 feet (two heights of our sloped garage).

Special Tree(s)

There are two large magnolia trees currently overshadowing the footprint of the proposed development, and both their canopy and roots may require protection or changes to the design. These two trees fall into different lots. The first is 70 inches in circumference and located on 211 3rd St SE, making it a special tree (over the 45 inch special tree threshold). The canopy and roots of the tree at 211 3rd St SE could require protection. Using google maps and an overlay of the development area, approximately a third of this tree's canopy ("crown") conflicts with the proposed development (extending over the proposed development area). This could result in the tree's death without protection or relocation measures.² To date, the Applicants have not born the burden of evidence in how they would protect this tree.

The second Magnolia tree lies on 209 3rd St SE, and the record does not indicate whether this tree is a special tree, or even a 'Heritage Tree' (more than 100 inches in circumference), which creates even higher burdens and standards to meet. Information on Special and Heritage Trees can be found on the District Department of Transportation's website:

<https://ddot.dc.gov/page/ddot-special-tree-removal-permit>.

At a hearing for the previous application submitted by the Applicants, the Office of Planning stated that it would get a report from Urban Forestry on this issue. However, because the

² See e.g., USDA Forest Service Guidelines. http://www.dec.ny.gov/docs/lands_forests_pdf/prunetree.pdf
"No more than one-quarter of the living crown should be removed at a time. If it is necessary to remove more, it should be done over successive years."

Applicants did not move forward on that application and instead filed this one, that report was never done, which is necessary to assess the issues with said trees.

Notice

Further, as the record property owners of 215 3rd Street, SE—a property within 200 feet of the alley, we never received notice of the Application. On November 22, 2017, Applicants submitted this application and also filed a list of the names and mailing addresses of the property owners located within 200 feet. (Exhibit 8). On December 21, 2017, the BZA sent notice of the public hearing to the property owners listed by the Applicants. (Exhibit 29). Applicants incorrectly listed the wrong individuals as the property owners of 215 3rd Street, SE and the letter was returned as undelivered on January 8, 2018. (See Exhibit 35). On February 1, 2017, the Applicants submitted a new address letter, 200 feet radius map, revised architectural drawings and a revised Form 120. (Exhibit 43). However, to date, we have not received proper notice pursuant to the regulations. As a result, we were only recently made aware of this application and the additional materials submitted by the Applicants. As a result of the recent new filings in this matter—we have just now retained counsel. If we had more notice of the application, we likely would have asked the board to recognize us as a party to the case.

Construction Management Plan

The ANC, in its report, stated that there should be “ongoing communications with neighbors, including throughout the construction process and including a construction management agreement.” While the Applicants’ newly retained counsel suggested that her client would be interested in such a plan in her supplemental statement, we have yet to receive anything confirming as such. At any rate, we would need much more time for the Applicants’ counsel and our lawyers (all of whom have just been retained within the last few days) to negotiate a construction management plan that satisfies the concerns of the neighborhood. Any such plan would need to include, at least, the following:

- 1) Independent construction management oversight: an independent construction management entity is needed to manage the construction portion of the design-bid-build process. This includes sequencing of construction tasks, utility work, and general experience in overseeing comparable projects so that it is done right. This goes above and beyond the legal minimum of bonds and stop work orders from DCRA. The Applicants have not demonstrated their experience with managing comparable construction projects, and the complicated right-of-way (dense alleyway) in this particular case warrants independent oversight by someone with comparable project experience. One of the specific reasons for particular care in our case is that our house exploded from conflicting gas/utility work and adjacent roadway construction in 1979 (National Transportation Safety Board Report P-80-59). We are concerned something as destructive might happen in the future.
- 2) Damage and Performance of Repair Work: Applicants shall repair at Applicants’ sole cost, any and all damage to neighboring property caused by or arising out of construction of the project. Any damage caused by or arising out of construction of the project shall be

