



June 1, 2018

VIA IZIS

Frederick Hill, Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, D.C. 20001

Re: BZA Application No. 19722, Party Opponent's Response to Applicant's Supplemental Filings

Dear Chairperson Hill and Members of the Board:

This is a response to the supplemental filings by the Applicant in Board of Zoning Adjustment ("BZA") Application No. 19722 on behalf of the owner of 450 K Street NW (450 K CAP LLC), a 233 unit apartment building that has residential windows within 8.5 feet of the Applicant's rear property line ("450K Building").

As stated at the hearing on April 4, 2018, we actively support the improvement of the neighborhood. We are eager to see development of this vacant site. However, the Applicant is not looking to do a neighborly project. It is looking for entitlements which depend upon variances to the Zoning Regulations that are not justified by the facts and circumstances. The Applicant fails to establish hardships that are required for the requested relief. The sheer number and scope of the variations requested by the Applicant suggest that the Project is simply too large and out of proportion for the property. As such, it will cause, if approved, adverse impacts on the quality and use of neighboring properties. The Applicant's request is based on fictitious hardships that are not site

related but due to the oversized project planned for this small square lot of land. Granting the relief sought by the Applicant for the proposed project based on these fictitious hardships will cause real hardships and be to the direct detriment to its existing neighbors.

The factual grounds for our opposition to this application are based on the following points:

A. Rear Yard – Light and Air

The zoning requirement for a rear yard for the proposed hotel is 20' 8". If the hotel met this requirement, there would be approximately a thirty (30) foot light well between the proposed hotel's rear wall and the windows of our residential tenants. This would be sufficient light and air in an urban environment. However, the Applicant proposes, with special zoning relief, a rear yard of only 1.5 feet. If approved, this would place the hotel's rear windows a mere ten feet from the residential windows of the 450K Building.

While our due diligence at the time of our purchase of the 450K Building indicated that our windows were "at risk", we also evaluated the rear yard requirement of 925-5th Street (as well as the other properties in the city block (the "Square")) to determine what the existing zoning would permit. We do not believe there is sufficient justification to grant the Applicant a 73% variance from the rear yard requirements for its property. If granted, it will create severe adverse conditions to many residents of the 450K Building. It will result in a very narrow light well that will be detrimental to the tenants in the 450K Building who face the hotel's rear wall, substantially impacting their light and air, as well as privacy and views. A section showing the required rear yard and the Applicant's proposed rear yard in relation to the 450K Building is attached as Exhibit 1.

Granting this variance would unfairly advance the interests of Applicant by greatly diminishing the light, air and quality of life of the residents who face the rear of the proposed building.

B. Alley

Traffic and loading in the rear will create problems for our building's daily operations. In fact, these problems will also inure to Applicant's building as well. The collateral damage, operational and functional, will be significant to all the buildings that use the alleys in the Square as well as 5th Street. Given the proposed oversized development and the major variances of the loading requirements of the Zoning Regulations, which the Applicant requires, granting such relief would be overreaching. The alley, and especially the Project's proposed 11 ½ foot loading entrance at the end of the multipoint turn, makes it factually untenable to believe that deliveries will go smoothly, timely and safely (see the Photo in Exhibit 2). The proposed narrow loading entrance at the end of the alley would require such extremely difficult maneuvering by trucks that they may choose not to use the loading dock and park in the alley thereby blocking others use and potentially creating even worse noise disturbances for all the neighbors facing the alley. A detailed critique of the Applicant's latest traffic analysis, prepared by the President of MCV Associates, Joe Mehra, recognized by the BZA as a traffic expert, is attached as Exhibit 3.

In fact, along with our concern about the alley's operation directly impacting our building, the neighborhood is very concerned about 5th Street. If the loading proposed for the Project does not prove viable, Applicants delivery trucks will be forced to use 5th Street. This is exactly what the ANC and the community is concerned about (see ANC

6E's letter dated April 3, 2018 attached as Exhibit 4). If such relief is mistakenly granted and the community's concerns prove correct, the long term adverse impact on the community will be material and permanent.

C. Zoning

The Applicant's site is not a hardship site. It is a flat, rectangle property with frontage on 5th Street. There are no practical difficulties or changed circumstances that prohibit a development on the site that conforms with the Zoning Regulations. It is abundantly clear what current zoning requirements would permit to be built. To argue that there is hardship is not a function of the property or zoning restrictions, but of the price being paid. Our position has been consistent, that the Applicant is seeking undeserved entitlement from the District of Columbia and the BZA that will adversely affect the 450K Building, its residents and the neighborhood based on a fictitious hardship. This is a self-induced hardship designed to create greater value to the Applicant. Absent compelling factual circumstances (not present here), the Zoning Regulations are not designed to deliver benefits to one party at the expense of another party.

D. Good Faith

After careful review of Applicant's submissions to the BZA, we are concerned with the Applicant's previous submissions, in that they do not represent the true and complete factual picture surrounding this Application. For example: In its first traffic report, the Applicant's expert suggested that there would only be six truck deliveries, (without detail as to type, timing or frequency - daily, weekly or monthly), accessing the Applicant's small loading dock at the end of a narrow alley. Our testimony challenges

this understatement of vehicular traffic that would cause ongoing, daily operational problems in the alley and for the operation of the 450K Building. The Applicant himself stated at the hearing that deliveries would only occur between 12:00 pm and 4:00 pm; however, Applicant is not a thoroughly experienced hotel operator. His guarantee is not based upon any understanding of the necessary deliveries or discussions with vendors to ascertain their delivery schedules. In its Supplemental submission, the Applicant now “doubles down” and proffers a letter from the Applicant’s contractor which states that a hotel will only have two deliveries per day! We also own a hotel in the District of Columbia and the management of that facility reports that the Applicant’s proposed number of deliveries seems to be grossly understated. The Jefferson Hotel on 16th Street NW has on average 15 deliveries a day, four to seven times per week (see [Exhibit 5](#)).

Also, the Applicant presents a Sun/Shadow study to show that the 450K Building would not be adversely affected by the proposed hotel. The supplemental filing refers regularly to that false premise as the crux of our rear set back complaint. This is also a half truth. We have always maintained that one problem is light and air due to proximity. Additionally, as noted above, such proximity will impact tenants’ privacy, views and quality of life resulting in less desirable units for rental. Furthermore, the Applicant has misrepresented the ANC’s unconditional support of the project (see [Exhibit 4](#)).


E. Conclusion

As multigenerational “buy and hold” real estate owners, who have never sold a residential property, our investment in the 450K Building indicates that we are seriously vested in the neighborhood and the community. We are committed to, and strong boosters of, Mount Vernon Triangle, its Community Improvement District, where we serve on the board, and ANC 6E. We sponsor the MVT Farmer’s Market and its Open Space initiative, as well as, at the ANC’s request, supported the ANC financially on issues they opposed that would impact the community. We are also proud to be the new home of Busboys and Poets, relocating from City Vista to our 450K Building, sustaining the vibrancy of the neighborhood. We want to see the neighborhood further developed and enhanced (it is in our long term interest as well), but with projects that are beneficial to the neighborhood, not at the expense of it.

As demonstrated above and at the hearing, the Applicant in no way demonstrates a hardship under the Zoning Regulations to justify the numerous variances it seeks. Applicant’s requested relief is nothing more than a request to enhance value of its site at the expense of the 450K Building, its residents and the neighborhood. As such, we respectfully submit that the requested relief should be denied.

Thank you for your consideration.

Very truly yours,


Lester Schwalb

June 1, 2018
Page 7

CC: ANC 6E
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