

re: Letter in Opposition to Case Number 19751 (Application of MED Developers LLC)

Members of the Board of Zoning Adjustment:

My name is Brandon Bortner and I reside with my wife and two young children at 67 Observatory Circle NW. I write in opposition to Case Number 19751 (Application of MED Developers LLC), which relates to the proposed memory care facility at 2619, 2621 and 2623 Wisconsin Avenue NW (the "Proposed Development").

The following numbered paragraphs set forth the basis of my opposition to the application by MED Developers LLC (the "Applicant").

1. MAHCA – Unable to Absorb Even Minor Zoning/Traffic Changes

My neighborhood, where the Proposed Facility would reside, is bordered by Wisconsin Ave. to the West, Garfield St. to the North, Massachusetts Ave. to the East and Observatory Circle/Calvert St. to the South, and is referred to as the Massachusetts Avenue Heights Community Association ("MAHCA").

MAHCA is exceedingly small, approximately 1.06 miles around with no street within MAHCA being longer than 1,423 ft.



As a result of its size, MAHCA is very sensitive to changes in traffic volume and parking pressure as well as nonconforming uses generally. Additionally, MAHCA is bordered by two major arterial

roadways (Wisconsin Ave. and Massachusetts Ave.) and located immediately prior to the intersection of those two major arterials. The intersection of Wisconsin Ave. and Massachusetts Ave. is a problematic intersection, which has been historically ignored by DDOT to the detriment of surrounding neighborhoods. Not surprisingly, MAHCA is constantly subject to high-speed cut through traffic looking to avoid the backup from the intersection of Wisconsin Ave. and Massachusetts Ave. With no road greater than 1,423 ft in length, any increase in traffic volume/parking demand is acutely felt within MAHCA.

The BZA has recently been presented evidence of MAHCA's capacity problem in the form of the 2461 Wisconsin Ave. NW, Comprehensive Transportation Review (July 2018) prepared by Wells + Associates in connection with Case 19816 (the "*July 2018 Study*").

Specifically, the July 2018 Study, included an analysis of Level of Service (LOS) on Observatory Circle NW, MAHCA's primary access point to Massachusetts Ave. LOS is a quality measure describing operational conditions within a traffic stream. Six LOS are defined with letters designating each level, from "A" to "F", with "A" representing the best operational conditions and "F" the worst. Notably, the July 2018 Study found that Observatory Circle NW approaching Massachusetts Ave. operates at LOS F, indicating unacceptably unstable traffic flows and vehicle delay. This LOS, and the volume impact on MAHCA generally, will only get worse if Case 19816 and its additional related traffic volume is approved, especially given the anticipated commercial development along the Wisconsin Ave./Massachusetts Ave. corridor and DDOT's historical failure to address the intersection of Wisconsin Ave. and Massachusetts Ave. in favor of promoting cut-through traffic in residential neighborhoods. Additionally, the July 2018 Study was conducted prior to DDOT's ill-advised decision to remove the AM/PM left turn restriction from Massachusetts Ave. to Observatory Circle NW, which has already significantly increased traffic volume within MAHCA.

The Proposed Development would house roughly 36 patients who would receive visitors and be cared for by commuting care workers, janitorial and kitchen staff and doctors. The Applicant has not disclosed total commuter numbers, however, suffice it to say that these commuters would meaningfully increase traffic volume and parking pressure within MAHCA as noted in various other letters of opposition. Additionally, MAHCA is not well-suited for public transportation and, regardless of whether or not meaningless \$10 coupons are handed out via a TDM Program, the suggestion that 45% of commuters to the Proposed Development would utilize public transportation is particularly unrealistic and nothing but lip service.

Gorove/Slade, the Applicant's parking expert, indicated in its report dated September 17, 2018, the following modal splits and parking demand.

Table 1: Mode Splits for Employees

Mode	Mode Split
Auto	55%
Transit	27%
Bike	3%
Walk	15%

Table 2: Parking Generation (ITE Land Use 620)

Land Use	Size	ITE Calculation	Calculated Parking Demand
Nursing Home (Parking Generation)	36 Beds	P= 0.35(X)	13
		45% reduction based on Non-Auto Mode Split	-6
		Parking Demand	7

In clarifying its analysis, Gorove/Slade only states “The parking demand of the memory care facility is driven by the parking demand associated with the employees.” The figures above neither reflects visitors (e.g., friends, family, doctors or occupational therapists), nor a clear definition of “employees” (e.g., do “employees” include kitchen and janitorial staff). However, it is very clear that the “Mode Splits for Employees” was chosen without basis and, by all comparable accounts, assuming 45% of employees will use non-vehicular transportation is completely unreasonable.

The bottom line is that parking within MAHCA’s borders, which is already overcrowded from ANC 3B residential and commercial overspill, would only get worse with the Proposed Development. Yet, surprisingly and without rational basis, the Applicant seeks relief from the parking requirements, which is completely unacceptable.

When it comes to traffic volume and parking, MAHCA is under constant pressure, is already operating at capacity and cannot survive additional degradation within its borders, in particular in the form of additional nonconforming high-density up-zoning such as the Proposed Development.

2. The Proposed Development = Irreversibly Bad Precedent

Zoning is a covenant between a government and its taxpayers. As taxpayers, we purchase or rent a dwelling in a particular area based on a set of promises with respect to its maintenance as to form and use. Approving the Proposed Development in any form would be an unacceptable breach of this covenant that would, without a doubt, serve as a cornerstone precedent for widespread up-zoning.

Let’s not be so naïve as to assume Case Number 19751 is, at its core, a determination with respect to a memory care facility. It was only a year and a half ago that the Applicant sought an exception to build a homeless shelter at the site of the Proposed Development and only weeks ago where the Proposed Development was to take the form of an assisted living facility rather than a memory care facility. Case Number 19751 isn’t about the public need for any particular facility falling under a special exception, but rather whatever exception the Applicant can jam through the BZA and profit at the expense of MAHCA’s resident taxpayers.

The fact remains that the Applicant will not covenant to operate the Proposed Development as a memory care facility and there is no purchase option to MAHCA in the event the memory care

facility fails (others have credibly noted that the Proposed Develop is not sustainable as a memory care facility). Once built, the Applicant could easily petition to turn the Proposed Development into an apartment building or whatever use is otherwise monetarily attractive. In other words, the BZA should view the application for the Proposed Development as nothing more than a request to irreversibly up-zone R-1-B lots within MAHCA because, at its core, that is the Applicant's request in Case Number 19751.

By no uncertain terms, approval of Case Number 19751 would be tantamount to up-zoning MAHCA's entire border along Wisconsin Ave. and serve as a roadmap for developers to similarly seek profit going forward. The Proposed Development internalizes virtually none of its externalities and, instead, selfishly asks MAHCA residents to absorb its impact (*e.g.*, parking, traffic, noise, building height, trash collection, etc . . .). If approved, the Applicant will have a green light to build a massive five-story building on R-1-B lots and utilize MAHCA infrastructure without limitation, including an alley built to R-1-B standards (where children play and actual residents access their homes) for its personal parking, refuse and loading access. It is no wonder why the Applicant has hired Cozen O'Connor, the foremost consigliere to up-zoning developers, and hired multiple other experts to support its unrealistic assumptions – approval of the Proposed Development would serve as a watershed moment for city-wide disregard of zoning laws designed to protect residential neighborhoods.

From a public policy and zoning precedent perspective, it gets worse because let us also not forget how the Applicant came to acquire rights to the site of the Proposed Development. Bruce Finland, President of MED Developers, engaged in secret meetings with the executive branch of DC government and, with his long-standing ties insiders, was offered a lucrative no-bid lease for the proposed homeless shelter on the site. In turn, MED Developers bought the option on the land before the public was aware of the proposed use and, since that time, has extended the option even after the shelter was relocated. Accordingly, after finding itself with an option on a R-1-B site without a preordained non-conforming use, the Applicant, a political operative with a long history of strategic political contributions, is effectively asking the BZA for a bailout via whatever black check special exception *de jure* is on the menu.

As a resident of MAHCA, a taxpayer and somebody who has been afforded no special treatment in adhering to the zoning and building requirements (from renovating the interior of my house to fixing my front steps), I ask that you treat the Applicant no differently, summarily deny the application for the Proposed Development, and preserve my single-family residential neighborhood for the benefit of my family and my neighbors.

Sincerely,

Brandon Bortner
67 Observatory Circle NW