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Director Jeff Marootian
District Department of Transportation
55 M Street, SE Suite 400
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Dear Director,

On Friday, the agency submitted a report to the Board of Zoning Adjustment ("BZA") in Case No. 19751. In that case, MED Developers, LLC, seeks to build a memory care facility in an R-1-B single-family residential neighborhood. To do so, the developer is requesting two special exceptions: (a) a use exception under Subtitle U §203.1(f) for Continuing Care Retirement Community use and (b) a parking exception, to permit relief from the residential parking standard in Subtitle C §701.5, assertedly because the proposed use meets one of the criteria in Subtitle C §703.2. DDOT's analysis, however, seems to flow from an improper legal standard, and I would now ask that you withdraw the report until the correct standard can be applied.

As a general matter, minimum parking requirements are governed by Title 11 DCMR Subtitle C, chapter 701. Deviations from those minimums pursuant to a special exception occur pursuant to Title 11 DCMR Subtitle C, chapter 703, which provides in pertinent part that the BZA "may grant a full or partial reduction in number of required parking spaces, *subject to the general special exception requirements of Subtitle X....*" (emphasis added). In turn, that subtitle provides that the BZA may grant special exceptions where the exception "[w]ill meet such special conditions as may be specified in this title." 11-X DCMR § 901.2(c). And, the special conditions for Continuing Care Retirement Communities provides, among other things, that "[t]he use and related facilities shall provide sufficient off-street parking spaces for employees, residents, and visitors." 11-U DCMR § 203.1(f)(4). This means, then, that at a baseline, the facility must have off-street parking sufficient for employees, residents, and visitors. DDOT concludes in its report that, although the applicant "anticipates that the use will require approximately 18 daytime and three (3) overnight staff members" it proposes "to provide nine (9) spaces accessible via the site's rear 15-foot public alley." By the face of the requirements for the special exception, the applicant has not met the standard required under law, yet the agency "has no objection to the approval of the requested relief."

To reach this conclusion, the agency appears to rely heavily on the ability of the applicant to divert employees, residents, and visitors from using personal vehicles. Again, as a baseline matter, this is inconsistent with the requirements of the special exception, and that is not mentioned in the report. But, even assuming that such an approach were

consistent with the law, the analysis nonetheless takes for granted many facts that are either unclear, undocumented, or inapplicable.

First, the report references the number of employees expected at the facility, but that information is not established in the application or pre-hearing statement. Whatever information has been provided by the applicant to the agency should be appended to the report to document the number of employees, visitors (including all vendors), and other traffic to include proposed off-site group outings referenced in the pre-hearing statement and Office of Planning report.

Second, the report considers the number of on-street spaces available to accommodate the applicant's needs. The regulations allow consideration of the "[q]uantity of existing public, commercial, or private parking, *other than on-street parking*, on the property or in the neighborhood, that can reasonably be expected to be available when the building or structure is in use." 11-C DCMR §703.2(g) (emphasis added). Nonetheless, the agency spends considerable time reviewing the implications on blocks with Residential Parking Permit zoning. And, the report concludes that "[o]n typical weekdays, the study suggests that there would not be enough Non-RPP or unrestricted spaces to accommodate all employees. However, employees could either locate curbside parking options further away from the site or choose alternate means to commute." Again, for this to serve as a basis for a positive recommendation seems at odds with the regulations.

Third, residents have raised substantial concerns that will need to be decided. For example, is the staffing model proposed sufficient? Will more staff be required such that more trips that are being suggested will be necessary? What is the timing of shift changes and has that been incorporated into the analysis? Why is the alley referenced in the report at all if dedicated loading facilities are not required by zoning? Has the applicant performed a traffic assessment or study? Has it been reviewed by the agency and, if it has, why is that not referenced?

Fundamentally, what concerns me is that the agency has produced a report that suggests that this project satisfies the required legal standards. Precisely which standards are being applied and why, however, is not at all clear. From my reading of the law, the incorrect standard is being used. Even if my reading is not correct, though, I do not see the factual predicate to satisfy another standard. The agency should withdraw the report and reissue it with a clear statement of the standard and the factual basis for meeting that standard. Where information is required, it should be provided and documented. Where information is not required or is expressly excepted from consideration, it should be left out. Doing otherwise provides a report on a contentious issue that engenders too little faith in the work product. And, as matters stand now, this report seems to have been a product of a rushed and ill-conceived analysis driven by the needs and desires of the applicant. Again, it should be withdrawn.

Regards,

Mary M. Cheh