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VIA EMAIL

September 16, 2018

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

Re: Letter in opposition to BZA case 19751 (Application of MED Developers, LLC)

Dear Chairman Hill and Members of the Board,

I am an owner of the R-1-B single-family home located at 2608 36th St NW. I urge the BZA to reject MED Developers, LLC's ("MED") request for two special exceptions for a proposed development at 2619, 2621 and 2623 Wisconsin Avenue. The BZA hearing for this request is currently scheduled for September 26, 2018¹, under case number 19751.

This request involves three lots zoned for single family homes in the residential R-1-B zone. The developer seeks to demolish the existing homes and erect a 3+ story² memory care facility for 36 people in a nonconforming building. Most homes in the Observatory Circle neighborhood range from 3,000-5,000 square feet in size. This proposed development would be 6x-10x larger than the average home, with a size of roughly 30,581 square feet. There are numerous problems with bringing such a large facility to an R-1-B zone.

The District of Columbia Zoning Handbook provides in part:

The purposes of the R-1-B zone are to:

- *Protect quiet residential areas now developed with detached dwellings and adjoining vacant areas likely to be developed for those purposes; and*
- *Stabilize the residential areas and promote a suitable environment for family life.*

¹ Given the failure to notify all homes within 200 feet of the three lots the developer seeks to consolidate, as discussed in exhibit 47 of the record, I strongly urge the BZA to continue this hearing so that neighbors are given an adequate opportunity to comment on the proposal.

² While the developer claims the project is three stories, plus a cellar and roof equipment, the public evidence presented to-date suggests the project contains a basement, rather than a cellar, putting the project at four stories.

The R-1-B zone is intended to provide areas predominantly developed with detached houses on moderately sized lots.

1. THE BZA SHOULD DENY THE REQUEST FOR A SPECIAL EXCEPTION FOR PARKING RELIEF

At an August 29, 2018, meeting, MED representatives³ stated that there would be an ongoing rotation of 24-hour caretaker staff, as well as medical personnel, cooks, cleaners, beauticians, physical therapists, athletic staff, administrators, outside vendors, visitors, and transportation providers providing outings for the residents. MED is seeking a special exception for parking, as it inexplicably plans to provide only nine parking spots for the building and its many employees, visitors, and vendors. This will force parking onto the streets of the residential neighborhood with a major impact on the immediate neighbors.

As a preliminary manner, I wonder why MED is seeking an exception from the zoning code requiring one parking spot per residential unit, which the developer has interpreted as a requirement to have 17 required spaces (Exhibit 41A, page 2), and the Office of Planning has interpreted as a requirement to have 19 parking spaces (Exhibit 50, page 5). This building is not an apartment building or townhouse; the residents will not be capable of driving. Nor is this a standard assisted living complex for seniors in transition, who might want to store a car on site. This is a memory care facility. The types and frequency of traffic, with shifts of workers and medical providers coming and going at all hours more closely aligns with that of a medical care facility than a condominium with a handful of units and the occasional visitor.

The BZA should properly classify the project as a medical care facility, requiring a minimum of one parking space per 1,000 sq. ft. in excess of 3,000 sq. ft., with a minimum of 1 space required. Subtitle C § 701.5. Based on the 30,581 square feet of buildings, this would require a minimum of at least 27 parking spaces, which would allow the employees, caregivers, and visitors to safely and legally park at the site.

At the August 29th meeting, MED stated that the lack of parking spots will not be a problem, because the development will simply utilize metro, bike share, and the neighborhood's already limited street parking. MED is correct that the development would be accessible by a few bus lines (though none that run in the middle of the night during shift change), but the site is not metro-accessible, and most people find it easier to drive to this part of the district. Despite MED's protests, it seems unlikely that many vendors are going to use Capital bikeshare, or employees utilize an imaginary bus at an 11 p.m. shift change.

The lack of parking at the facility will lead to increased parking throughout the neighborhood, which is already burdened by parking overflow from the Glover Park Hotel, a non-conforming structure in the neighborhood, and nearby places of worship. In obtaining a traffic study to support its position that it should be freed from parking requirements, MED focused not on whether public transit was a realistic solution for the vendors and employees, but on whether there was sufficient neighborhood parking. But neighborhood parking is not a realistic option.

³ MED brought multiple lawyers, architects, site operators, and MED staff to the meeting. For the sake of simplicity, this letter refers to everyone who presented that evening as "MED."

The neighborhood is zoned for RPP, meaning the staff or vendors of the facility would not be able to legally park on the streets unless they were only working a two-hour shift.

Moreover, the developer's count of available street parking spaces was obviously cherry picked. There are times each week when street parking is already extremely challenging for those of us who call the neighborhood home. Many of the blocks (including my own), have portions of the street where the sidewalks bend into the street to accommodate trees, which is good for the trees, but has the unfortunate side effect of removing usable parking spaces.



These photos taken on September 2, 2018, show average parking availability on the proposed facility's cross-street, Edmonds, on a Sunday.



The photo above was taken on Edmonds facing west towards Wisconsin Ave, and the photo to the left is on Edmonds facing towards Massachusetts Ave.

At the time I took these photos on the four blocks of Edmonds between Wisconsin and Massachusetts Ave., I counted two cars parked illegally, zero parking spaces large enough for a car the size of a Honda accord, and one open parking spot large enough for a SMART car.

enough for a car the size of a Honda accord, and one open parking spot large enough for a SMART car.



I then went out on a Saturday, and documented a similar lack of parking directly in front of my house. (Photo to the left showing Edmonds; photo to the right showing 36th Street.)



MED's claims of ample neighborhood street parking are ludicrous to those of us who are familiar with the neighborhood. The BZA must deny this request for a special exception and instead require the developer to provide a reasonable plan to provide parking and transportation for the site, reflecting the surrounding R-1-B neighborhood.

2. THE BZA SHOULD DENY THE SPECIAL EXCEPTION REQUEST TO PLACE THIS MEMORY CARE PROGRAM IN A RESIDENTIAL NEIGHBORHOOD

The developer is also seeking a special exception to bring a memory care program into a residential neighborhood. The zoning code requires that in order to grant such a special exception "the use ... shall be located and designed so that it is not likely to become objectionable to neighboring properties because of noise, traffic, or other objectionable conditions." Subtitle U § 203.1(f).

This facility fails to meet the requirements of Subtitle U: It will bring noise, traffic, loss of light and privacy, and increased water runoff for surrounding properties.

a. NOISE AND TRAFFIC

The vastly increased flow of traffic resulting from shift changes, ambulances, and deliveries to a narrow alley measuring only 13.9' in width will result in a dramatic loss of quality of life for the nearby properties whose yards and parking back onto the alley. Moreover, large generators and mechanical systems running on the roof at all hours of the day will certainly add to the noise pollution in the neighborhood.

The neighborhood could easily absorb the noise and traffic of three single family homes on these lots. Installing an enormous building with staff and visitors coming and going from the site 24 hours a day, is a huge leap in noise and traffic for an R-1-B zone.



MED repeatedly relies on the different zoning conditions found on the west side of Wisconsin Ave. – which are located in an RA-4 zone designed for apartment buildings – as justification for intruding on the R-1-B zone. However, MED never mentions the more sensitive Naval Observatory zoning only one block away from the proposed site development. DC's zoning code was recently overhauled in 2016. If the DC government intended to make this neighborhood into a more densely populated area, that was the time to do so. Instead, the 2016 zoning code widened the Naval Observatory zone and maintained the R-1-B zone to prevent exactly this type of development. MED is simply attempting to make a blatant end run around the zoning code.

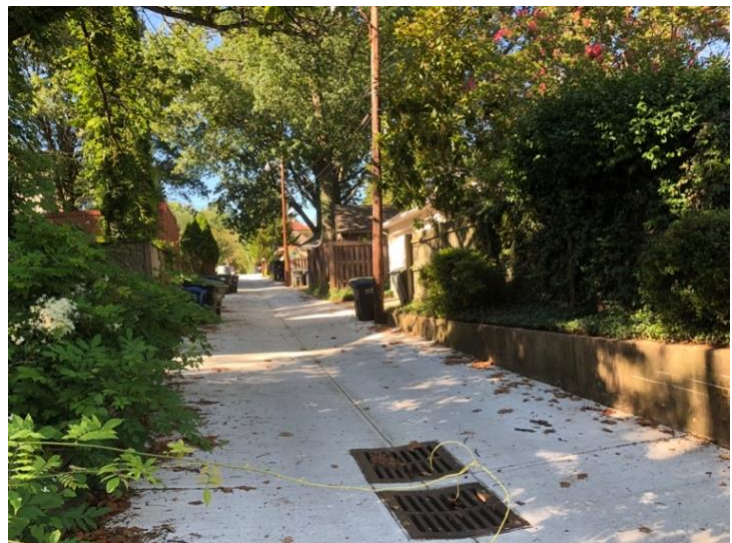
b. LOSS OF LIGHT AND PRIVACY

If MED abandoned this project and instead built three R-1-B single family homes, each house would have at least 16 feet between each house, and occupy a maximum of 40% of each lot.

Instead, the proposed building is at least six times as large as any other house in Observatory Circle, and will not blend in with surrounding houses. The “renderings” supplied by MED as part of its slide show depict the neighborhood houses as grey square blocks. This deliberate misrepresentation ignores the fact that all of the surrounding properties are single family homes with different architectures and a community feeling. The only part of the rendering that is accurate is that the development will tower over the houses in the neighborhood, blocking their light and privacy. Based on these drawings, the development will be tall enough that its top floor will be able to look directly into our bedroom windows and backyard, more than a block away.

The MED renderings also suggest that the alley is wide enough to accommodate the many delivery trucks, staff, visitors, and increased traffic. This is inaccurate. The streets on either side of the alley are both one-direction, making it more challenging for commercial trucks to access the alley. The alley itself is very narrow, only 13.9 feet in width, into which residents must reverse out of garages or parking strips. The alley was simply not designed for commercial traffic; it was designed for an R-1-B zone. (Some reports reference a 15” alley. That measurement is accurate only if one ignores the utility poles placed down the alley at regular intervals, eating into the space available to maneuver in the alley. If a car is backing out of the memory care facility, it has less than 14” to reverse before it risks hitting a utility pole.)⁴

The DDOT report nods at the narrow alley by noting, “[i]f approved, the Applicant should monitor conditions at the alley's intersections to assess whether or not curbside parking needs to be restricted on Edmunds or Davis adjacent to the alley to allow additional room for maneuvers into the alley.” (Exhibit 45, page 5.) There is a certain irony to the situation: A new non-conforming facility leads to a dearth of street parking in the residential neighborhood. The developer then demands



⁴ Top photo, back to Edmonds, facing south down the alley. Bottom photo, standing on Davis, facing north up the alley towards Edmonds.

that some of the remaining existing parking be removed so that its service vehicles can more easily access the space, once again prioritizing the needs of the commercial developer over the individual homeowners in the neighborhood.

Inexplicably, MED's plans fail to provide footage measurements. But assuming they are drawn to scale, a simple check with a ruler shows that more than 50% of the development will be nonpermeable building, loading, parking, or ramps. This will lead to increased rainwater drainage runoff to the surrounding properties and alley.

c. OTHER OBJECTIONS

This project poses safety threats to the pedestrians in the neighborhood. My third grader routinely uses the neighborhood alleys to walk to friends' houses. Neighbors use the alleys to access their homes and walk their dogs. Bringing a large commercial establishment with shift changes, a rotating cast of service providers and visitors, and pairing the same with a lack of on-site parking means a steady stream of people will be zipping down alleys looking for parking. This will present a genuine risk to the dozens of school children living in the neighborhood.

The project also raises concerns about rodent and bug infestations. A memory care facility housing 34 residents (and staff) will produce a significant amount of trash and biohazard waste. The application provides for a loading dock and dumpster area on the narrow residential alley. Nearby Glover Park has had an incredible problem with rodents and bugs, resulting in the closure of Whole Foods and complaints from many neighbors about the problems created by the restaurants in the strip. This development may extend those problems into our residential neighborhood.

When asked, MED said it would arrange for trash pickup for its large development "1 or 2 times a week" consistent with the rest of the neighborhood. This application does not reflect any serious consideration of the extensive biohazard and medical waste that will be generated from a memory care facility.

3. LACK OF TRANSPARENCY

a. Misrepresentation of community outreach.

MED claims that it has "conducted significant community outreach, including four community meetings." (Exhibit 41, page 17.) Poppycock. The developer has obfuscated and hidden plans for the development in an effort to push the project through as quickly as possible.

I informally heard about the one true "community outreach" meeting MED organized outside ANC meetings in the nick of time to attend. This community meeting took place on August 29, and was cut short when the developer refused to continue answering good-faith questions. Hosting an evening meeting the last week of summer, immediately before Labor Day appears to be intentionally designed to discourage participation. Given the lack of notice, my husband was unable to be in town, but attempted to attend the meeting via the advertised video conference. Unfortunately, MED was unable to make either the video conference or conference call line work – or accept help from those in the audience with technical experience who were offering

suggestions of how to mute lines so that the system might function properly. As a result, there was no way to remotely participate in the meeting.

MED provided only superficial building plans at the meeting. The slides failed to provide any factual information like size of the total building, heights, surface area covered, or any studies MED has conducted regarding environmental impacts with water or noise. When audience members asked about missing design elements from the plans – like a sufficient number of bathrooms in the basement – MED responded that the community would need to “trust it” to add those design elements later in the process. MED refused to state whether it had financing arranged, or the duration of its contract with the proposed operator. This leads me to worry about whether this project has been adequately scoped, or whether there is a long-term commitment to the project and neighborhood.

At the community meeting, MED shared its traffic study. While my house lies smack in the middle of the street shown to be most impacted by the parking study, I have never been contacted by MED about any meetings or proposed plans, and only heard about the August 29 at the last moment. If MED was genuinely interested in learning more about the community and available parking, it certainly could have asked residents about their experiences and sought input.

It is clear that MED’s plan was to push through this development before my husband or I learned about it. This is not the way to gain community trust or inspire a positive working relationship.

b. Failure to request a special exception to build a four-story building in an R-1-B zone.

In its filing with the BZA, MED states the development will consist of a “cellar” and three additional stories, plus a roof filled with mechanical equipment. While the developer has failed to provide drawings reflecting the pertinent elevations with this application, it appears to the naked eye that the “cellar” on the plans is actually a basement that should count towards the number of stories.

Under DC’s zoning code adopted this summer, “[t]hat portion of a story partly below grade where the finished floor of the ground floor is five feet (5 ft.) or more above the adjacent natural or finished grade, whichever is the lower in elevation. The basement of this building will open straight onto the back patio, at the same level as the alley, and is properly classified as a basement, not a cellar.” Zoning Commission Order No. 17-18 (adopted July 2018).

Basements count toward the number of stories a building can have, and both the gross floor area and number of stories are regulated by zoning. Cellars, though, count towards neither, supposedly because they are hidden enough to not affect the “bulk,” or perceived size, of a building. A primary feature touted by MED is that residents will be able to walk directly outside the basement space onto a patio level with the surrounding grade.

It is possible the developer is jumping through various hoops to attempt to technically qualify the bottom floor as a cellar, though it is impossible to evaluate that with the documents the developer has filed in support of this application. To all of the surrounding homes facing the building, this

will appear to be a four-story building. Allowing a four-story building into an R-1-B zone flies without a special exception makes a mockery of our zoning code.

4. LACK OF VIABLE BUSINESS MODEL

The Glover Park neighborhood is struggling to keep its commercial district vibrant. The Whole Foods has been shut down for more than a year, and is now sliding into disrepair with a decaying facade. The loss of the Whole Foods appears to have had an impact on the surrounding businesses, with neighborhood restaurants recently going out of business (Saigon Kitchen, Mad Fox Taproom, Mason Inn, Heritage India, Brugger's Bagels). The non-conforming union building at the corner of Calvert and Wisconsin stands vacant.

The last thing the community needs is an additional large, non-conforming structure that does not have a viable economic model. I firmly oppose granting an exception for these three lots to be consolidated despite the R-1-B zone. However, were such a facility built – in violation of the housing code designed to protect the residential neighborhood – our neighborhood deserves the assurance that the use upon which the entire special exception hinges is viable, that the facility will be run well, and that the facility will only be permitted to be an assisted living facility.

At the August 29 community meeting, MED spoke out of both sides of its mouth – stating that most national providers didn't want facilities with fewer than 50-78 units, and also that small “greenhouse” developments of 12-24 units were rising in popularity. Unfortunately, this proposed development of 34 beds fits neither of those demographics.

The operator at the community meeting offered assurances of their industry experience, but when pressed, admitted it only had one other memory care facility in operation, as a small section of a much larger retirement community development in Florida. If the BZA takes the time to visit the operator's website, it will see that the operator is actually a “hospitality management” company unprepared to manage a memory care facility. <https://www.guestservices.com/about-us/> Even the jobs posted on the website are consistent with those in hospitality, not in senior care (i.e., baristas and tour guides): <http://guestservices.iapplicants.com/searchjobs.php>.

I have watched family members struggle with dementia, and visited dozens of assisted care facilities in different parts of the country. In the process, I have learned about the types of questions one might ask when considering a facility. Based on the answers provided at the community outreach event, I would not put someone I cared about into this proposed memory care unit.

Despite claims from MED of “generous” staffing levels, the staff to client ratio is low, given the number of disoriented people who will need help with basic mobility and daily skills functions. This is especially true at night. However, there is only one elevator in the building. When asked about an evacuation plan for residents in the event of an emergency shutting down the elevator, the developer reported that the residents would “shelter in place” in the stairwells. This is a truly shocking answer. Under this hypothetical, when an earthquake or fire hits at 2 a.m., MED is expecting one staff person per floor to be able to persuade a dozen elderly Alzheimer's patients to press against each other and shelter in place in at the top of the stairwell landing with their walkers or wheelchairs until they are able to be assisted down flights of stairs and out of the building. Emergency preparation plans are severely lacking, and may not be feasible with only

one elevator and the limited staffing. When the elevator needs to be serviced, or is otherwise not functioning, patients will be trapped on their floors.

Outside of the 350+/- sq. ft living quarters,⁵ the residents will be primarily housed in a basement common area, with limited light or space. Residents are to be provided with entertainment in the basement, including “virtual” experiences.⁶ While there is a small outdoor area, it does not show any notable protection from the elements, suggesting it is usable space for only a portion of the year when it is not too hot or cold for an elderly person to be outside.⁷ Otherwise, if a resident wants natural daylight, it looks like the best option is to stay in his or her bedroom, which would be incredibly isolating for someone struggling with memory issues.

When people need extra help with medical, psychological, and spiritual support in the final months of their life, many families benefit from hospice care designed to promote the patient’s comfort and dignity. At the community forum, I asked MED where hospice workers would stay for end of life care, given the modest-sized rooms. In response, I was told that if a resident needs full-time assistance, that they will need to move facilities. Telling prospective families that disoriented loved ones will need to adjust to a new facility in their final days is hardly reassuring or likely to attract business.

The vast majority of existing private memory care facilities in Washington appear to be located in the Northwest quadrant. (Forest Hills of DC, Sunrise on Connecticut, Grand Oaks, The Residences at Thomas Circle). All of the other sites appear to have more generous spaces, are able to accommodate hospice, and are better situated to allow staff and visitors to reach the site using metro. Who would choose to spend more than \$144,000 annually to put their loved one at the proposed MED site instead?

5. CONCLUSION

Washington, DC has expended enormous resources revitalizing the schools and libraries in the District to attract and retain families with children. Placing new large nonconforming commercial buildings in residential neighborhoods flies in the face of this long-term planning and will lead to erosion and fragmentation of these recently revitalized neighborhoods.

⁵ The plans provided by MED do not show any bathrooms in the units on the 1st floor, but I hope those residents will also have bathrooms in their rooms.

⁶ While not an expert on elder care, I work in the technology policy space. I hope MED will respect the safety of any future residents of this facility by noting that most virtual reality devices include a warning if you are elderly, or have pre-existing conditions such as vision abnormalities, psychiatric disorders, heart conditions, or other serious medical conditions. That warning includes implanted medical devices, such as cardiac pacemakers, hearing aids and defibrillators, as well as anyone with epilepsy or a history of seizures and blackouts. Sharing the devices can spread contagious diseases and infections and cause skin irritation. This is not an ideal “experience” for someone suffering from dementia.

⁷ The plans also fail to show any type of fencing near the garden. Fencing is needed both to protect residents with memory issues from wandering offsite, and to protect the residents from the steady stream of delivery trucks and cars that will be coming to the facility.

Construction like the proposed memory care is directly contrary to the intent of the R-1-B zoning designed to “protect quiet residential areas” and “promote a suitable environment for family life.” If this memory care facility fails, there will be an empty, large, nonconforming building with a stark layout unsuitable for many other uses.

I urge the BZA to protect the children in our residential neighborhood and reject the requested Special Exception requests.

Sincerely,

A handwritten signature in cursive script that reads "Lisa A. Hayes". The signature is written in black ink and is positioned above the printed name.

Lisa A. Hayes

cc: Councilmember Mary Cheh (via email)
ANC 3C (via email)